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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921

No. 106

**ATCHAFALAYA LAND COMPANY, LIMITED; SCHWING
LUMBER & SHINGLE COMPANY, LIMITED, AND THE
BOARD OF COMMISSIONERS OF THE ATCHAFALAYA
BASIN LEVEE DISTRICT, PLAINTIFFS IN ERROR,**

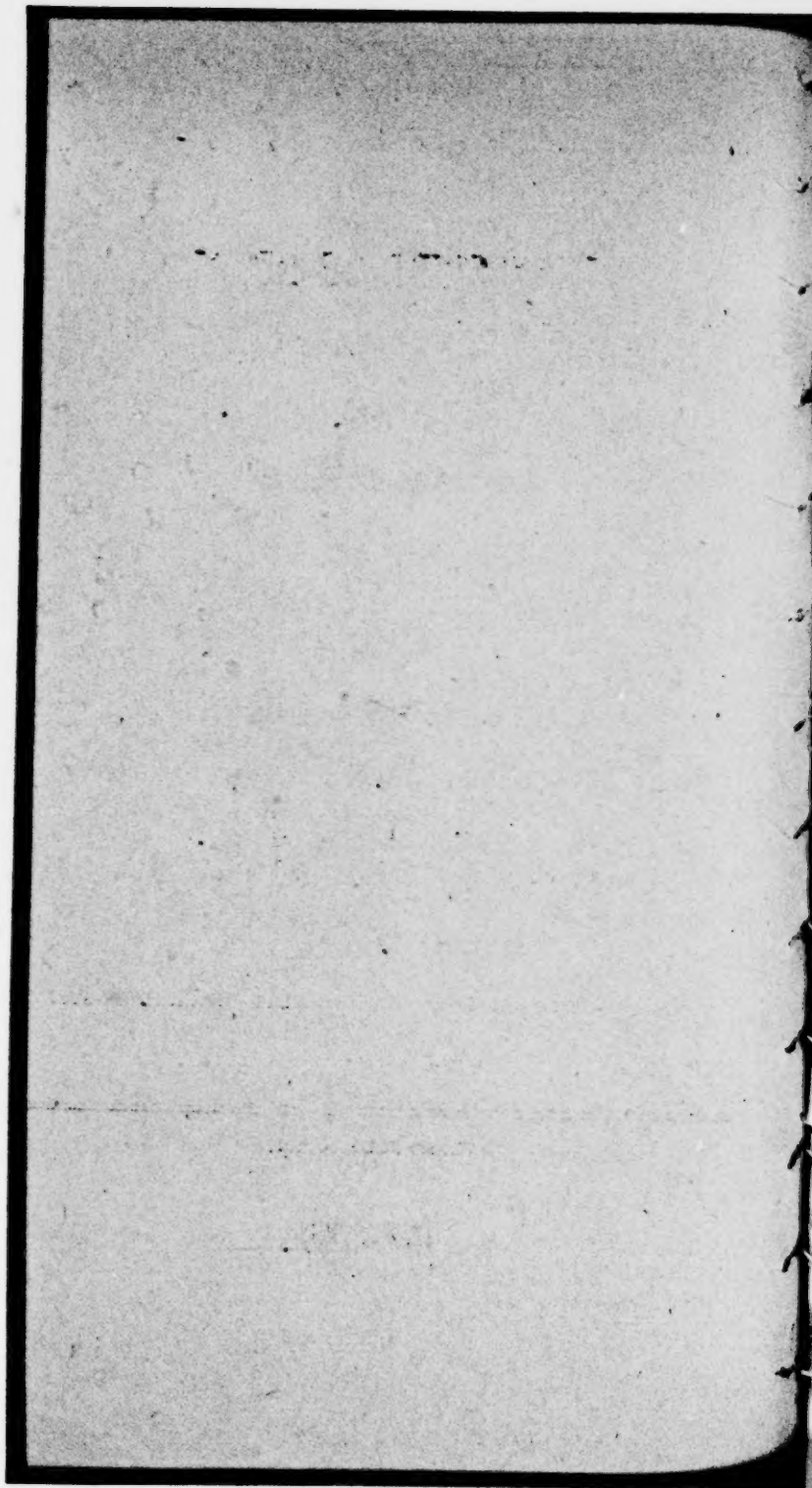
vs.

F. B. WILLIAMS CYPRESS COMPANY, LIMITED.

IN ERROR TO THE SUPREME COURT OF THE STATE

FILED JULY 14, 1922.

(27,806)



(27,806)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 449.

ATCHAFALAYA LAND COMPANY, LIMITED; SCHWING
LUMBER & SHINGLE COMPANY, LIMITED, AND THE
BOARD OF COMMISSIONERS OF THE ATCHAFALAYA
BASIN LEVEE DISTRICT, PLAINTIFFS IN ERROR,

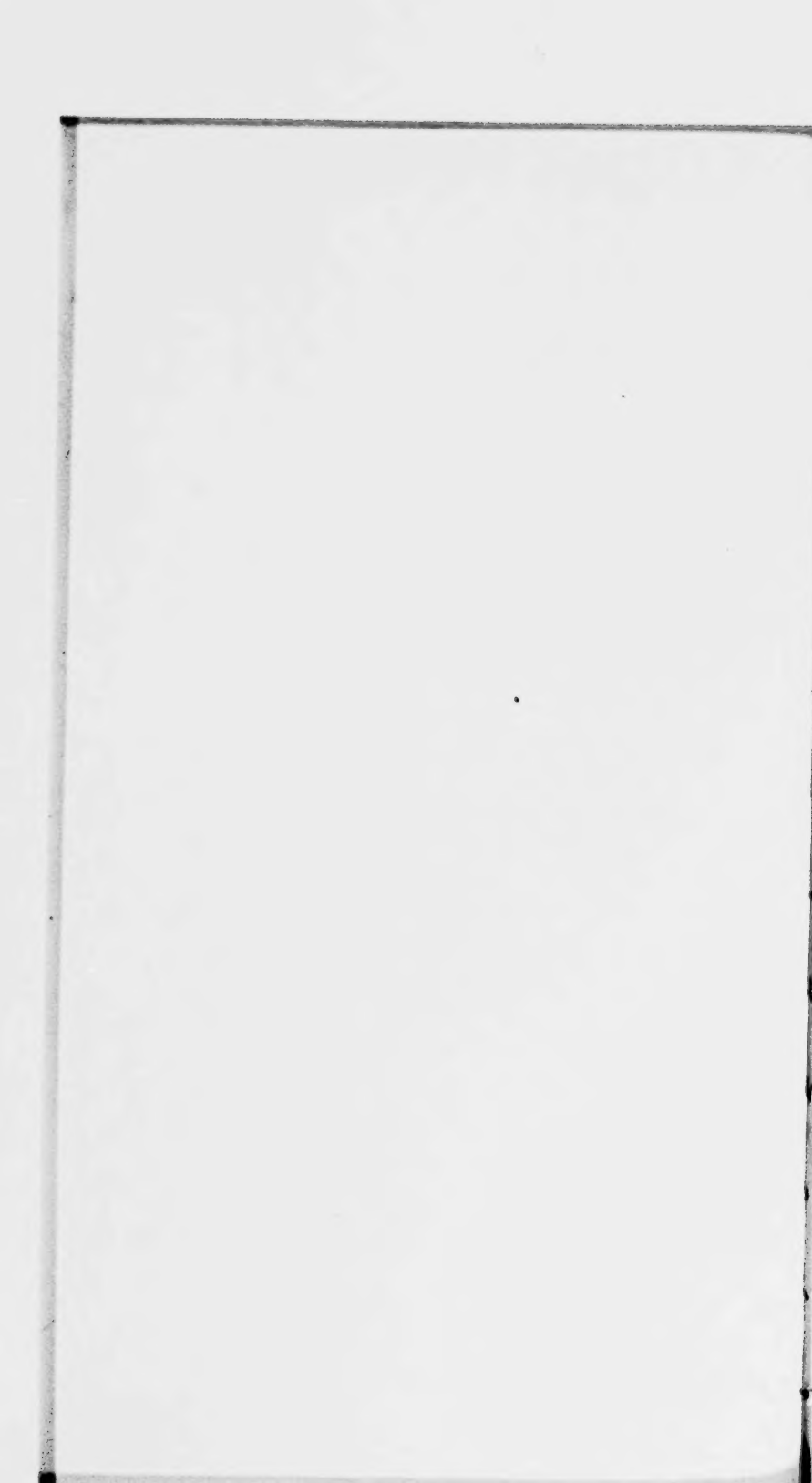
vs.

F. B. WILLIAMS CYPRESS COMPANY, LIMITED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a Chronological Index of All Docket Entries In re No. 7539, Atchafalaya Land Company, in Liquidation, vs. F. B. Williams Cypress Company, Limited, et als.

- 1 26 19—Petition of Plaintiff with affidavit of Counsel thereto.
- 5 1 19—Answer and Intervention of the Board of Commissioners of the Atchafalaya Basin Levee District.
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- 6 16 19—Exception of Defendant, F. B. Williams Cypress Co., Limited, of no cause or right of action and plea of prescription of six years under Act 62 of 1912.
- 6 29 19—Amended petition of Plaintiff, The Atchafalaya Land Company, Limited, in Liquidation with acceptance of service by Defendants.
- 7 7 19—Judgment and reasons for judgment upon exception of no cause or right of action and plea of prescription submitted at Chambers in St. Martinsville, said exception being overruled.
- 7 19 19—Petition of Intervention of the Schwing Lumber and Shingle Company, Ltd.
- 7 26 19—Amended petition of the Intervenor Schwing Lumber and Shingle Co.
- 7 26 19—Answer of the defendant, F. B. Williams and the F. B. Williams Cypress Co., Ltd., to the petition of the plaintiff.
- 7 26 19—Answer of Defendants, F. B. Williams and F. B. Williams Cypress Co., Ltd., to the petition of intervenor, Board of Commissioners of the Atchafalaya Basin Levee District.
- 7 26 19—Answer of defendants, F. B. Williams and F. B. Williams Cypress Co., Ltd., to petition of Intervention of the Schwing Lumber & Shingle Co.
- 7 28 19—Acceptance of service of amended petition of the Schwing Lumber & Shingle Co., Ltd., Intervenor, by Defendants and adopting as answer to same the answer made by defendants to the original petition of said Intervenor.
- 7 28 19—Cause submitted upon statement of facts and documentary evidence introduced and taking under advisement.
- 7 31 19—Judgment for plaintiffs, oral reasons.

7 31 19—Judgment read, signed and filed.

7 31 19—Motion and order of appeal to Supreme Court.

8 5 19—Bond of appeal.

1 *Petition of Plaintiff, The Atchafalaya Land Company, with
Affidavit of Counsel Thereto,*

Filed April 26th, 1919.

To the Honorable the Judge of the Nineteenth Judicial District Court
in and for the Parish of Iberia:

This the petition of the Atchafalaya Land Company, Limited, in
Liquidation, and whereof J. M. Dresser and Misses M. A. Dresser and
J. A. O'Brien are co-liquidators, the said plaintiff having been a cor-
poration duly chartered according to the laws of the State of Louisi-
ana, and domiciled in the City of New Orleans, with respect sets
forth:

1.

That by Congressional grant in 1849, (9 Stat. 552 C. 87) and
1850, (9 Stat. 519 C. 84) the United States granted to the State of
Louisiana all of the swamp and overflowed lands within her limits
for the purpose of aiding in the reclamation of these lands by the con-
struction of levees and drains.

2.

That included in the grant as swamp and overflowed lands, duly
approved and certified under said grants to the State of Louisiana,
there were included lands situated in the Parishes of Iberia and St.
Martin, whereof the greater part is situated in Iberia, of which the
following is a description, to-wit:

In Township 13, S. R., 11 E. La. Mer. E. 2 of W. 2 and E. 2, Sec.
8; N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, N. E. $\frac{1}{4}$ and E. 2 of S. E. $\frac{1}{4}$, Sec. 9, con-
taining 760.08 acres.

N. W. $\frac{1}{4}$, N. 2 of S. W. $\frac{1}{4}$, W. 2 of N. E. $\frac{1}{4}$, N. 2 of S. E. $\frac{1}{4}$,
Sec. 21 containing 400 acres; E. 2 of S. W. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ Sec. 35,
containing 239.60 acres.

S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, E. 2, of S. W. $\frac{1}{4}$, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, S. E.
 $\frac{1}{4}$ of S. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Sec. 17,
containing 319.28 acres.

N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, N. $\frac{1}{2}$ of N. $\frac{1}{2}$, S. W.
 $\frac{1}{4}$ of N. W. $\frac{1}{4}$, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Sec.
2 4, N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, E. $\frac{1}{2}$ of S. W.
 $\frac{1}{4}$, Sec. 3, containing 561.41 acres.

N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, W. $\frac{1}{2}$ of E. $\frac{1}{2}$, E. $\frac{1}{2}$ of
W. $\frac{1}{2}$, Sec. 5 containing 440.25 acres.

In Township 12, South Range 11 E. La. Mer. E. $\frac{1}{2}$ of Sec. 21, containing 320.42 acres;

W. $\frac{1}{2}$ of Sec. 27, containing 320.50 acres.

E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and N. W. $\frac{1}{4}$, Sec. 28, containing 241.08 acres; S. W. $\frac{1}{4}$ Sec. 29, containing 161.08 acres; E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ Sec. 30, containing 89 acres; S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, S. W. $\frac{1}{4}$ and E. $\frac{1}{2}$ Sec. 33, containing 561.19 acres; W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and W. $\frac{1}{2}$ Sec. 34, containing 400.62 acres, and which lands are far in excess of two thousand, (\$2,000.00) dollars in value.

3.

That the General Assembly of the State of Louisiana, by Act 97 of 1890 created the Board of Commissioners of the Atchafalaya Basin Levee District and constituted the same a body corporate, invested with all the rights and powers of such corporations; and by virtue of Sec. 11 of said act, assigned and transferred unto said Board all of the swamp and overflowed lands situated within the confines of the Levee District hereinabove set forth, in the language following, to-wit:

"That in order to provide additional means to carry out the purposes of this act and to furnish resources to enable said Board to assist in developing, establishing and completing a Levee System in said District, all the lands now belonging or that may hereafter belong to the State of Louisiana, and embraced within the limits of the levee district hereinabove constituted, shall be and the same are hereby given, granted, bargained, donated, conveyed and delivered unto said Board of Levee Commissioners of the Atchafalaya Basin Levee District, whether said lands or parts of lands were originally granted by the Congress of the United States to this State, or whether

3 said lands have been or may hereafter be forfeited to or bought in by or for, or sold to the State, at tax sales for non-payment of taxes, whether the State, has, or may hereafter become the owner of lands, by or through tax sales, conveyances thereof shall only be made to said Board of Levee Commissioners after the period of redemption shall have expired, provided, that any and all such former owners of lands which have been forfeited to purchasers by or sold to the State for non-payment of taxes, may at any time within six months next ensuing after the date of the passage of this act, redeem said lands, or any of them, upon paying the Treasurer of the State all taxes, interest, costs and penalties due thereon down to date of said redemption, but said redemption shall be deemed and be taken to be sales of land by the State, and all and every sum or sums so received shall be placed to the credit of the Atchafalaya Basin Levee District. After the expiration of said six months, it shall be the duty of the Auditor and Register of the State Land Office, on behalf of and in the name of the State, to convey to said Board of Levee Commissioners, by proper instruments of conveyances, the lands herein granted or intended to be granted and conveyed to said Board, whenever from time to time said Auditor and said Register of the State

Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners, or by the President thereof, and thereafter said President of said Board shall cause said conveyances to be properly recorded in the Recorder's office of the respective parishes wherein said lands are or may be located, and when said conveyances are so recorded the title to said lands with the possession thereof, shall from thenceforth vest absolutely in said Board of Levee Commissioners, its successors or grantees, said lands shall be exempt from taxation after being conveyed to and while they remain in the possession or under the control of said Board. Said Board of Levee Commissioners shall have the power and authority to sell,

1 mortgage, pledge or otherwise dispose of said lands in such manner and at such times and for such prices as to said Board shall seem proper, and all proceeds derived therefrom shall be deposited in the State Treasury to the Credit of the Atchafalaya Basin Levee District, etc."

4.

That in pursuance of the authority conferred on it to sell said lands, the Board of Commissioners of the Atchafalaya Basin Levee District sold to Edward Wisner and John M. Dresser, all of the lands which the said Board had received in grant from the State of Louisiana, and which included, as already indicated in the provisions of the grant from said State which have been reproduced above the swamp and overflowed lands donated to the State of Louisiana by act of Congress. The provisions of this act of transfer are:

"The party of the first part sells, transfers and delivers without warranty and without resource, and selling only such right, title and interest as it has, but with subrogation to all rights, claims and demands of whatever nature against former proprietors, including the right to claim and recover damages for trespasses, unto parties of the second part, who purchase jointly, the interest of each to be equal, the following described property, to-wit: All the lands donated, ceded and transferred by act of the Legislature to the said Party of the first part, to include all lands sold for taxes at this date but as yet not deeded to the State, or to said party of the first part, but not to include lands hereafter accruing to the State at tax sale, or to said party of the first part otherwise than by tax sales already made, to include in other words, only lands at this date owned by said party of the first part, or to which said party of the first part can at this date lay just claim, and also all lands heretofore sold at tax sale, but for which the title has not been made to the State."

5 The said deed furthermore provided:

"That party of the first part is to lend itself, with all rights, powers and privileges and prerogatives to perfect its title, or the title acquired under this agreement to all lands to which it could have, and the parties of the second part can now justly lay claim to, and to do so whenever so requested by the said party of the second part, all

proceedings, however, to be at the expense of the party of the second part."

5.

That subsequent thereto, to-wit: on the 11th day of April, 1904, the Board of Commissioners of Atchafalaya Basin Levee District carrying out the terms of its agreement to make title to the vendees of Wisner and Dresser, and also in execution of the terms and conditions of its contract, entered into a further joint declaration in which it recited:

"Whereas, on the 9th day of July, 1900, the Board of Commissioners of the Atchafalaya Basin Levee District sold to Edward Wisner and John M. Dresser, all of the lands donated by act of the General Assembly of the State of Louisiana, to said Board of Commissioners of the Atchafalaya Basin Levee District, for which said Board has received the consideration in full cash, this sale being made with the understanding that the said Board of Commissioners of the Atchafalaya Basin Levee District were to lend itself with all its rights, power, privilege and prerogatives to perfect its title or the title acquired under said contract to all lands to which it could have, and the said Wisner and Dresser could justly lay claim to, and to do so whenever so requested by Wisner and Dresser, all proceedings, however, to be at the expense of the Party of the second part."

the said declaration proceeded to ratify various transfers made to individuals, assignees of Wisner and Dresser, as appear in said deed, the same reciting that all of this was being done at the request of Wisner and Dresser, and terminating with a confirmatory declaration affecting the lands transferred to the assignees of Wisner and Dresser in conformity with the terms of the original contract between the parties

6.

That Wisner and Dresser had organized the South Louisiana Land Company for the purpose of acquiring the interests of the lands purchased by them from the Board of Commissioners of Atchafalaya Basin Levee District as is set forth above, in various parishes, including the parishes of Assumption, West Baton Rouge, Pointe Coupe, St. Mary, Iberia and St. Martin, and that such transfers as were made directly to the South Louisiana Land Company by the Board of Commissioners of Atchafalaya Basin Levee District were in accordance with the demands made upon them and in accordance with the provisions of the contract of sale and the ratification thereof already hereinbefore recited. The South Louisiana Land Company having become the assignee of the Wisner and Dresser interests.

7.

That the South Louisiana Land Company transferred and assigned all of its rights to the lands and timbers in said purchases

to the Atchafalaya Land Company, Limited, and the Board of Commissioners of Atchafalaya Basin Levee District have recognized the Atchafalaya Land Company, as the assignees of Wisner and Dresser and have made deed to the Atchafalaya Land Company under such conditions as called upon in the manner provided for in the original contract.

8.

That the rights of the Board of Commissioners of the Atchafalaya Basin Levee District, and through said Board, the rights of petitioner or assignee, have been tested in a variety of cases prosecuted by the office of the Attorney General of this State either as plaintiff or defendant, and also by the Atchafalaya Land Company against various adverse claimants, resulting in a course of jurisprudence finally and definitely fixing the rights of the assignees of Wisner and Dresser to all the lands which were acquired by the Board of Commissioners of the Atchafalaya Basin Levee District through the grant made to it as hereinabove set forth, and which has resulted in a letter from the office of the Attorney General of this State to the Commissioner of the State Land Office, advising him that every contention adverse to these claims had been urged and tested by the State, and that it was his duty to make title to lands included in the grant from the State to the Board of Commissioners of Atchafalaya Basin Levee District, the letter being in the language following, to-wit:

"You are advised that the litigation involving the question as to whether your office should make title to the Atchafalaya Basin Levee Board of lands donated by it by Act No. 97 of 1890 has been finally concluded. I think all questions in that connection have been disposed of adversely to any contention that title should not be made, and you are advised that it is the duty of your office to make title to the Levee Board, or its assigns, of any land donated by Act 97 of 1890, or other legislation, to which title has not been made by your office. You will understand, of course, that this does not refer to lake bottoms now in litigation, or those of similar character to such as are in litigation."

9.

That, notwithstanding the fact that the lands above described, granted to the State of Louisiana under the swamp land grant, as set forth above, and has been duly certified to the State at the time of the grant by the State to the Board of Commissioners of the Atchafalaya Basin Levee District, thereby bringing said lands within the grant of the State to the said Board of Commissioners of the Atchafalaya Basin Levee District, after said grant has become effective and the land above described had become the property of the said Board of Commissioners of Atchafalaya Basin Levee District, subject to the execution of patent in the manner prescribed by the statute, Frank B. Williams, a resident of the

Parish of St. Mary, caused the then Register of the State Land Office, J. S. Lanier, to issue to him a patent in the name of the State conveying said lands.

10.

That the said Frank B. Williams subsequently assigned and transferred said property to a corporation known as the F. B. Williams Cypress Company, Limited, of which he was then and is now the president and principal and controlling stockholder, owning ninety per cent. or more of the stock, and all of the timber interests of the said F. B. Williams having been merged in this corporation, as affiant is reliably advised, and being so advised and believing, declares.

11.

That the said John S. Lanier, Register of the State Land Office, has been absolutely divested of all authority to dispose of these lands in the name of the State after the State has by Legislative act donated the same to the Board of Commissioners of the Atchafalaya Basin Levee District, and the said Frank B. Williams was held to know and did know that the said grant has been made, and that the said Lanier had no authority to execute said patents bearing upon the lands not belonging to the State, and to that event the said lands were deeded and accepted in bad faith.

12.

That the said Frank B. Williams caused the said patent to be inscribed in the Clerk's Office of the Parishes of Iberia and St. Martin and that the same remains there as a cloud upon the title, rights, and privileges of the plaintiff company; that the said
9 patent is an absolute nullity and the same should be cancelled and annulled and ordered erased from the records of the Clerk's office of said parish.

13.

That petitioner having acquired from the Board of Commissioners of Atchafalaya Basin Levee District through the deed to Wisner and Dresser, all the lands within the parishes set forth above and being entitled to any right, title or claim to which the Board of Commissioners of Atchafalaya Basin Levee District might justly lay claim to, it has disposed of its rights to the Cypress timber situated on the lands to which it lays claim, necessarily inclusive of the lands hereinabove set forth and that it is desirous of protecting its assignee, the Schwing Lumber and Shingle Company, Limited, against any trespass upon the rights assigned to said parties.

14.

That with the reservation of the rights of the assignees named above to claim such damage as may arise from the timber heretofore removed from said lands by Frank B. Williams and the F. B. Williams Cypress Company, Limited, it avers that it has been reliably informed and believes that the said Frank B. Williams and the F. B. Williams Cypress Company, Limited, are engaged in the cutting and removing of other timbers from the lands set forth above and that they have equipped themselves for the purpose of cutting and removing all of the timber from said lands unless they are restrained from so doing, and that the removal of said timber, or further trespassing upon said lands under any pretense of title based upon the illegal, null and void patent recited above, would cause irreparable injury to petitioner, and that the said Frank B. Williams and the F. B. Williams Cypress Company, Limited, should be enjoined and restrained from further trespassing upon said lands.

10

15.

That the issue of title being presented under the conditions hereinabove set forth, coupled with the fact that the said defendants are likely to remove the timber from the lands pending the disposal of this suit, presents a situation justifying the suggestion to the Court the propriety of ordering a judicial sequestration of said property for the preservation of the rights of all parties involved pending the decision of this cause.

16.

That as hereinabove recited, the Board of Commissioners of Atchafalaya Basin Levee District, whereof Victor Lefebvre is president, has recognized the Atchafalaya Land Company, Limited, as the assignee of Wisner and Dresser of lands in the Parishes set forth above, and has made title to the same whenever requested to do so under the terms of the original grant to Wisner and Dresser.

17.

That it is obligated to lend all of its machinery and offices to vindicate the rights of petitioner to the lands hereinabove set forth, and the said Board should be called into vindicate the title of petitioner as it is its duty to do, and failing therein, that there should be reserved to petitioner the right to claim from said Board such damages as may arise from the non performance of said duty.

Wherefore, petitioners prays that Frank B. Williams and the F. B. Williams Cypress Company, Limited, through its proper officer, be duly cited to answer the demands of this petition, that after the expiration of legal delays and due hearing, there be judgment declaring the land set forth to have been included in the grant to the

State of Louisiana to petitioner's authors, Board of Commissioners of Atchafalaya Basin Levee District, anterior to any pretended title set forth in the patent issued by John S. Lanier, Register of the State Land Office, to Frank B. Williams; that the said pretended patent to Frank B. Williams be declared absolutely null and void; that after due hearing the said Frank B. Williams and F. B. Williams Cypress Company, Limited, be enjoined and restrained from further trespassing upon said lands or from cutting and removing any timber therefrom, or in any other manner interfering with the rights and privileges of the plaintiffs.

Petitioner further prays that the Board of Commissioners of the Atchafalaya Basin Levee District, be duly cited, through its President, Victor M. Lefebvre, to join with the plaintiff in the vindication of plaintiff's rights as hereinabove set forth, and upon its failure to do so, that there be reserved to plaintiff such cause of action as may arise, whether in damages or otherwise, from the non-performance of its obligation.

And for costs and general relief.

BURKE & SMITH,

F. E. DELAHOUSSAYE,

Attorneys.

Before me, the undersigned authority, personally came and appeared Walter J. Burke, who being sworn, says: That he is of Counsel for plaintiff; that all the facts of the foregoing petition are true and correct, to the best of his knowledge and belief, so help him God.

WALTER J. BURKE.

Subscribed and sworn to before me this 26th, day of April, 1919.

F. E. DELAHOUSSAYE,

Notary Public.

Filed April 26th, 1919.

F. G. DECUIR,

Dty. Clk.

12 *Answer & Intervention of the Board of Commissioners of
Atchafalaya Basin Levee District.*

Filed May 1st, 1919.

PARISH OF IBERIA,
State of Louisiana:

Nineteenth Judicial District Court.

ATCHAFALAYA LAND COMPANY, in Liquidation,

vs.

F. B. WILLIAMS CYPRESS CO., LTD., et als.

And now into Court comes the Board of Commissioners of Atchafalaya Basin Levee District, answering the petition in the above entitled and numbered cause, and appearing also herein for the purpose of complying with its obligation to assist in making title to the Atchafalaya Land Company as vendee and assignee of Wisner and Dresser, with leave of Court had to file this intervention for the purposes set forth herein, answers the plaintiff's petition as follows:

It admits paragraphs one, two, three, four, five, six seven and eight.

In answer to paragraph nine, it admits that the lands were granted to the State of Louisiana under the swamp land grant as set forth in the petition, and have been duly certified to the State, when under the provisions of Act 97 of 1890, the State granted the same included with all of the other lands in the Atchafalaya Basin to the Board of Commissioners of the Atchafalaya Basin Levee District; and further aver that any execution of the patent to Frank B. Williams by the Register of the State Land Office, J. S. Lanier, after the date of the grant by the State to the Levee Board named above was an absolute nullity, the said Register of the State Land Office having been
13 divested of all authority to dispose of said lands in the name of the State.

In answer to paragraph ten, it avers that it is not called upon to make any specific declaration as the same applies more particularly to the status of the defendants; but it avers, upon information had, that the status is as set forth in paragraph ten of plaintiff's petition, in which event the said F. B. Williams and the F. B. Williams Cypress Co., Ltd., stand before the Court as being the identical parties, the information of one being that of the other, and the act of one being binding upon the other.

In answer to paragraph eleven, and assuming here the obligation incumbent upon it by the terms of said contract with which it bound itself to assist the said Wisner & Dresser and its assigns to perfect title whenever called upon to do so, it declares that the said John S. Lanier, Register of the State Land Office, having been divested of any authority in the matter of the disposal of lands which had passed

over from the State of Louisiana to the Board of Commissioners of the Atchafalaya Basin Levee District after the date of said grant, that said Lanier was without authority to execute any patent to the land set forth in plaintiff's petition, and that any person, more particularly Frank B. Williams, and his alleged assignee, F. B. Williams Cypress Company, Limited, dealing with the said John S. Lanier, was charged with the knowledge of his lack of authority and acquired the said patent in bad faith.

In answer to paragraph twelve, it adopts the allegations of the same upon information furnished as to the inscription of the title, and further declares that said inscription should be erased from the public records of the parish in which inscribed.

In answer to paragraph thirteen, it alleges that the same 14 is personal to the plaintiff and its assignees, the Schwing Lumber & Shingle Company, Limited, and defendant is not called upon to reply thereto save to allege that it assumes the obligation of aiding and assisting in perfecting of title to any assignee or assignees of the original grantee, Wisner & Dresser.

In answer to paragraph fourteen, it avers that it has not sufficient knowledge to make any declaration.

In answer to paragraph fifteen, it has nothing to declare inasmuch as the same is a suggestion tendered to the discretion of the Court.

In answer to paragraphs sixteen and seventeen, it declares that the Board of Commissioners of the Atchafalaya Basin Levee District, having assumed the obligation to perfect title to Wisner and Dresser or to the assignees of Wisner and Dresser, that the same has uniformly recognized, and in the present instance does recognize the Atchafalaya Land Company as being the assignees of Wisner and Dresser, claiming title to the lands set forth in plaintiff's petition; and further, that with the clear intent and purpose of performing its part of the obligation as set out in said contract set forth in plaintiff's petition, to lend all of its aid for the purpose of perfecting titles to Wisner and Dresser, or its assignees, it declares that it appears in these proceedings for the benefit of the Atchafalaya Land Company, Limited, and to urge that such judgment as it would be entitled to receive and to have in its own name did it institute proceedings against the defendants on the cause of action set forth in plaintiff's petition, be rendered in favor for the benefit of its recognized assignee, the Atchafalaya Land Company, Limited, in Liquidation.

15 Wherefore, it prays to be allowed to file the intervention hereinabove to the extent and as fully as the answer hereinabove may be considered, also an intervention on the part of defendant, The Board of Commissioners of the Atchafalaya Basin Levee District.

That Frank B. Williams and the F. B. Williams Cypress Co., Ltd., through its proper officer, be duly cited to answer the demand of this intervention; that after due hearing there be judgment decreeing the land set forth in plaintiff's petition to have been included in the grant by the State of Louisiana to the Board of Commissioners of the Atchafalaya Basin Levee District, and by said Board assigned to Wisner and Dresser, and by these through mesne conveyances to

the Atchafalaya Land Company, Limited, and that all rights and equities under which the Board of Commissioners of the Atchafalaya Basin Levee District could require of the Auditor and Register of the State Land Office to make patent to said land have been vested in and belong to the Atchafalaya Land Company, Limited.

And further praying for all other remedies prayed for by plaintiff, which it joins in vindicating the grant set out above:

It prays finally for all general and equitable relief.

J. H. MORRISON,

*Attorney for Board of Commissioners of
Atchafalaya Basin Levee District.*

STATE OF LOUISIANA

Parish of Point Coupee

Before me, the undersigned authority, personally came and appeared J. H. Morrison, who being sworn, says he is of counsel for defendant and intervenor, the Board of Commissioners of the Atchafalaya Basin Levee District; that the facts and allegations set out in the foregoing answer are true and correct, to the best of his knowledge, belief and information.

J. H. MORRISON,

Subscribed and sworn to before me this 28th day of April, 1919.

17 *Order of Court Granting Judicial Sequestration to Issue.*

Filed May 12th, 1919.

PARISH OF IBERIA,

State of Louisiana.

19th Jud. Dist. Court.

No. 7539.

ATCHAFALAYA LAND CO., LTD., in Liq.,

vs.

F. B. WILLIAMS CYPRESS CO., LTD., et als.

In the above entitled and numbered cause, the Court having considered the allegations of plaintiff's petition, and the affidavit annexed thereto, and believing that the facts set forth in the petition justifying the exercise of the judicial discretion vested in the Court ordering a judicial sequestration of the property set forth in the plaintiff's petition in order to protect the timber on said land from further severance from the soil and removal from the land, as well as to safeguard the interest of all parties to such timber as may have been prepared for severance or actually severed from the soil,

It is ordered that a judicial sequestration issue and that the Sheriff of Iberia Parish be commanded to sequester and take charge of all the property set forth in plaintiff's petition and to safeguard the same pending the decision of this cause, and subject to further orders of this Court.

Granted officially this 12th day of May, 1919.

JAMES SIMON,
Judge.

Filed May 12th, 1912
F. G. DECUR,
D'ty Clk.

18 *Writ of Judicial Sequestration*

STATE OF LOUISIANA,
Parish of Iberia:

19th Judicial District Court,

ATCHAFALAYA LAND CO., LTD. in Liquidation,

vs.

F. B. WILLIAMS CYPRESS CO. et al.

To the sheriff of Iberia Parish, Greeting:

Whereas an order has been granted by the Honorable James Simon, Judge of the 19th Judicial District Court in and for the Parish of Iberia for a writ of judicial sequestration in the above mentioned and numbered suit, bearing the date the 12th day of May, 1919.

Now, therefore, you are hereby commanded in the name of the State of Louisiana, and of the above mentioned Court, to forthwith seize, sequester, and take into your possession and the same to safely keep under further orders of this Honorable Court all of the timber situated on the east half of W. $\frac{1}{2}$ and East half of Section 8, N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 9, the N. W. $\frac{1}{4}$, N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ N. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ Sec. 21, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ Section 35, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Section 17, N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, N. $\frac{1}{2}$ of N. $\frac{1}{2}$ S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ Section 4, N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Section 3, N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, W. $\frac{1}{2}$ of E. $\frac{1}{2}$, E. $\frac{1}{2}$ of W. $\frac{1}{2}$ Section 5, all in Township 13, S. 31 R. 11, East.

Also S. $\frac{1}{2}$ of Sec. 21, W. $\frac{1}{2}$ of Sec. 27 $\frac{1}{2}$ E. $\frac{1}{2}$ of N. E. $\frac{1}{2}$ and N. W. $\frac{1}{4}$ of Sec. 28, S. W. $\frac{1}{4}$ of Sec. 29, E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ Sec. 30, S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, S. W. $\frac{1}{4}$ and E. $\frac{1}{2}$ Sec. 33, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and W. $\frac{1}{2}$ of Sec. 34, all in township 12, South Range 11 East, Lat. Mer.

And what you do in the premises, you will make due returns thereof, together with this writ, as the law directs.

Witness the Hon. James Simon, Judge of our said Court this 12th day of May, 1919.

F. G. DECUR,
Dep. Clerk of Court.

Filed May 12, 1919,
F. G. DECUR,
Dty. Clk.

19 *Sheriff's Returns on Judicial Writ of Sequestration*

Filed May 12, 1919.

Received on the 12th day of May, A. D. 1919, and on the same day of the same month and year, executed the within writ of sequestration by taking into my possession the property as fully described on the within writ, and did appoint and constitute Mr. Roy Nunn, keeper under said writ, with instructions, to furnish a statement as to all timber removed from said lands, after the date of April 26, 1919, but which had been deadened and logged before the said date, and to furnish an additional statement as to the timber not deadened at the above date and deadened and out after the institution of this suit above named, being on the date hereinabove given. Due account is to be taken and due return made of any operations upon any specific tract.

Returned, Iberia Parish, this 12th day of May, 1919.

P. A. LANDRY,
Sheriff Iberia Parish, La.

Filed May 12, 1919.
F. G. DECUR,
Dty. Clk.

20 *Exception of Defendant F. B. Williams of no Cause or Right of Action and Plea of Prescription of Six Years under Act 62, p. 73, of 1912*

Filed June 16, 1914.

PARISH OF IBERIA,
State of Louisiana

19th Jud. Dist. Court.

ATCHAFALAYA LAND CO. (in Liq.)

versus

F. B. WILLIAMS CYPRESS CO., LTD., et als.

Exception.

Into this Honorable Court, -though undersigned counsel, comes F. B. Williams, one of the defendants, herein, who, appearing herein

solely and only for the purpose of excepting to said petition, shows that the petition discloses no cause and no right of action against said defendant, and for that reason its action should be dismissed, denied and rejected at its cost.

In the alternative, and in the event only that said exception should be over-ruled, and without waiving or abandoning same, but, on the contrary, at all times insisting upon same, your exceptor further shows and pleads that the cause of action, if any ever existed, (which is denied) is prescribed by the prescription of six years provided for by Act 62, P. 73 of 1912, which prescription your exceptor specially pleads as a bar to any action plaintiff had or might have had to attack said patents.

Wherefore, exceptor prays that his exception of no cause of action be sustained, and the plaintiff's action be dismissed, denied and rejected at its cost, and, in the alternative, in the event that the exception or no cause of action should be over-ruled, he prays that the plea of prescription of six years be sustained and that Plaintiff's action, for that reason be dismissed.

BOARD, HIMEL, BLOCH & BORAH,
HALL, MONROE & LEMANN.

Attorneys for Receiver.

I certify that the above exception is, in my opinion, good and valid in law, and that the same is not filed for delay.

C. F. BORRILL

Filed June 16, 1919

F. G. DECUR

 Msg. Clk.

Exception of Defendant F. B. Williams Cypress Company, Limited, of no Cause or Right of Action and Plea of Prescription of Six Years under Act 62 and Act 73 of 1912

Filed June 16th, 1919.

PARISH OF IBERIA.

State of Louisiana:

19th Jud. District Court.

ATCHAFALAYA LAND CO. (in Liq.)

VERSUS

F. B. WILLIAMS Co., LTD.

Exception.

Into this Honorable Court, through undersigned counsel, comes the F. B. Williams Cypress Company, Limited, one of the defendants herein, who, appearing herein solely and only for the purpose of

excepting to said petition, shows that the petition discloses no cause and no right of action against said defendant, and for that reason its action should be dismissed, denied and rejected at its cost.

In the alternative, and in the event only that said exception should be over-ruled, and without waiving or abandoning same, but, on the contrary at all times insisting upon same, your exceptor further shows and pleads that the cause of action, if any ever existed, (which is denied) is prescribed by the prescription of six years provided for by Act No. 62 P. 73 of 1912, which prescription your Exceptor specially pleads as a bar to any action plaintiff has or might have had to attack said patents.

Wherefore, exceptor prays that its exception of no cause of action be sustained, and the plaintiff's action be dismissed, denied and rejected at its cost, and, in the alternative, in the event that the exception of no cause of action should be over-ruled, it prays that the plea of prescription of six years be sustained, and that plaintiff's action for that reason be dismissed at its cost.

BOARTE, HIMEL, BLOCH & BORAH,

I certify that the above exception is, in my opinion, good and valid in law, and that the same is not filed for delay.

HALL, MONROE & LEMANN,

Attorneys for Exceptor.

Filed June 16, 1919.

F. G. DECUR,

Dty. Clk.

24 Amended Petition of Plaintiff, Atchafalaya Land Company, Limited, in Liquidation.

Filed June 20th, 1919.

STATE OF LOUISIANA,

Parish of Iberia:

19th Judicial Dis. Court.

ATCHAFALAYA LAND CO., LTD., in Liquidation.

VERSUS

F. R. WILLIAMS CYPRESS COMPANY et als.

To the Honorable the Judge of the 19th Judicial District Court in and for the Parish of Iberia:

This, the petition of the Atchafalaya Land Company, Limited, in Liquidation, whereof, J. M. Dresser and Misses M. A. Dresser and J. A. O'Brien, are co-liquidators, amending the original petition with leave of Court first had, sets forth as follows, to-wit:

That it amends paragraph four of the original petition by annexing thereto and making part thereof a duly certified copy of the original

contract entered into between the Board of Commissioners of the Atchafalaya Basin Levee District and Messrs. Wisner and Dresser, under date of July 9th, 1900, marked "Plaintiff A."

That it amends paragraph five of the original petition by annexing thereto and making part thereof certified copy of the deed of confirmation, bearing date the 11th day of April, 1904, which is annexed hereto, and made part hereof, marked "Plaintiff B." That while said deed contains assignments of specific tracts to various parties not involved in the present litigation, it does contain the confirmation of the original contract between the Board of Commissioners of the Atchafalaya Levee Board, and was further in pursuance of the agreement to make title to whomsoever requested; and that since the assignment to the Atchafalaya Land Company, Limited, as recited in the following paragraph, wherein Wisner and Dresser, the original grantees, appear as parties, the said Company has been the recognized assignee of Wisner and Dresser.

It amends paragraph seven, averring that the South Louisiana Land Company, by deed before J. G. Eustis, notary public, bearing date the 30th day of December, 1908, and said South Louisiana Land Company, Limited, being represented by Edward Wisner, President, sold unto the Atchafalaya Land Company, Limited, represented by J. M. Dresser, all of the lands situated in the Parish of Iberia, whether included by description in the deed or not, the intent being to transfer all of the rights of said Company in said lands, and by a similar deed the same parties represented by the same officers, transferred all of the land situated in the Parish of Saint Martin, as is shown by certified copies of said deeds hereto annexed and made part hereof for reference, marked "C. & D." the said Edward Wisner and the said J. M. Dresser, being the identical parties who were the original assignees of the rights of the Board of Commissioners of the Atchafalaya Basin Levee District to the lands in said District as outlined in the original petition, and the South Louisiana Land Company and the Atchafalaya Land Company having been organized by these parties, and being designated as assignees to whom various transfers had been made by the Board of Commissioners of the Atchafalaya Basin Levee District in conformity with the terms of the original contract between all parties.

That the status of all of these parties is recognized, affirmed and declared by the Board of Commissioners of the Atchafalaya Basin Levee District, not only in its various transactions and in the course of its business making titles to the Atchafalaya Land Company, as assignee of the Wisner and Dresser rights, but further and more specifically by an intervention in the present suit and other suits, wherein they declared that they recognize the

Atchafalaya Land Company, as successors to all of their rights, titles and interests, and joining the plaintiff for the purpose of making title to revert to the benefit of the plaintiff, and these declarations, while they are part and parcel of the pleadings, are likewise declarations binding upon the Board of Commissioners, of the Atchafalaya Basin Levee District, who present adverse claims to the contentions of the defendants to the lands in question and

assert these claims for the benefit of the present plaintiff; all of which lands as set forth in the pleadings, being situated within the limits of the Atchafalaya Basin Levee District.

Amending paragraph nine of the original petition, it avers that under the terms of the grant of the State of Louisiana to the Board of Commissioners of the Atchafalaya Basin Levee District, the said grantee and its assignees were given the right to perfect title which was vested in said Board by a grant in presenti upon the demand of the President of the said Board of Commissioners or the assignees of the said Board, it being part and parcel of said contract that the right to demand the perfecting of title was in said Board, or its assignees, to be exercised at any time, and that the said right being part of the obligation, cannot be denied or withdrawn from the said Board or its assignees, the possession of said lands by the State until the execution of said deeds at the option of the said Commissioners or their assignees, being for the benefit of the parties having the right to said lands, that it is of the essence of the grant by the State to the Board of Commissioners of the Atchafalaya Basin Levee District, and the said Board of Commissioners to Wisner and Dresser, that there should be no time limit against the rights of said parties and their assignees to require deed to issue for said lands,

and that the plaintiffs in the present cause have a right to assert their title to the lands such as they are, with the reservation of the right necessarily implied under the contract to require of the Auditor and Register of the State Land Office the issuance of proper deed of conveyance at the pleasure of the plaintiffs, and that it has the right to protect the property in its present status from depredation and adverse claims and pretensions in order that it may in due time exercise the right which is vested in it to demand execution of said deed.

That the provisions of Act 62 of the General Assembly of 1912 insofar as it could be pretended they affect the contracts set forth above, are absolutely null and void and against the provisions of the Federal Constitution, in that said act, if applied to the contracts set forth above and in the original petition, would deprive the petitioner of vested rights, without due process of law, and would impair the obligation of the contract entered into between the State of Louisiana and the Board of Commissioners of the Atchafalaya Basin Levee District, and said Board of Commissioners and Wisner and Dresser and their assignees, as set forth above, and in the original petition.

Wherefore, premises considered, petitioner prays that these amendments be allowed; that due service and citation be made, and after the expiration of legal delays and due hearing had there be judgment as prayed for in the original petition; and further, that the provisions of Act 62 of the General Assembly of 1912, be declared unconstitutional, null and void in so far as applied to the contracts set forth in the foregoing petition.

And for general relief.

BURKE & SMITH,
F. E. DELAHOUSAYE,
Attorneys.

Before me, the undersigned authority, personally came and appeared Walter J. Burke, who being sworn, says: That he is of counsel in the above entitled and numbered cause, and that all the facts and allegations set forth in the foregoing petition are true and correct, to the best of his knowledge and belief, to help him God.

WALTER J. BURKE.

Subscribed and sworn to before me this 18th day of June, 1919.

F. E. DELAHOUSSAYE.

Notary Public.

Order

Considering the foregoing petition and affidavit, let the amended petition be filed and allowed and service and citation made as prayed for.

Granted officially this 20th day of June, 1919.

JAMES SIMON,

Judge.

Service accepted and citation waived.

HALL, MONROE & LEMANN,

BORAH, HIMEL, BLOCH & BORAH,

Attorneys for Defendants.

Filed June 20th, 1919.

F. G. DECUIR,

Deputy Clerk.

Contract Between Board of Commissioners of the Atchafalaya Basin Levee District and Wisner and Dresser, of Date July 9, 1900, Attached and Made Part of Plaintiff's Amended Petition.

Marked "P-A."

Filed June 20, 1919.

Port Allen, Louisiana,

July 9th, 1900.

By and between the Board of Commissioners of the Atchafalaya Basin Levee District, party of the first part, represented herein by the President, Thomas G. Sparks, and Messrs. Wisner and Dresser, Edward Wisner and John M. Dresser, parties of the second part, the parties of the second part binding themselves herein and acting jointly and in solido, the following agreement has been this 9th day of July, 1900, entered into, viz:

The party of the first part sells, transfers and delivers, without warranty and without recourse, and selling only such right, title and interest as it has, but with subrogation of all right, claims and de-

mands of whatsoever, nature against former proprietors, including the right to claim and recover damages for trespasses, unto the parties of the second part, who purchase jointly the interest of each to be equal, the following described property, to-wit:

All the lands donated, deeded and transferred to wit: Act of the Legislature to the said party of the first part to include all land sold for taxes at this date, but as yet not deeded to the State or to said party of the first part, but not to include lands hereafter accruing to the State at tax sale, or to said party of the first part, otherwise than by tax sale already made to include, in other words only land at this date owned by said party of the first part or to which said party of the first part can at this date lay just claim, and also all lands heretofore sold at tax sale but for which a title has not been made to the State.

This sale is made for and in consideration of the price and sum of One hundred and twenty thousand dollars, of which Twenty-five thousand dollars has been this day paid cash, for which receipt is given, and the remainder, namely the sum of Ninety five thousand dollars is payable one half thereof in six months from this date, and the other half thereof in twelve months from this date, without interest. It is expressly agreed and understood that certain lands have heretofore been sold by the party of the first part without title thereto having been made out in favor of the purchasers, and certain lands have been quit claimed in favor of the former proprietors, of same, without quit claim deeds having been made out, and that such lands thus sold or quit claimed are not embraced in this agreement.

It is further agreed and understood that the said party of the first part is to lend itself with all its rights, power and privileges and prerogatives to perfect its title or the title acquired under this agreement to all lands which it could have and the parties of the second part can now justly lay claim to and to do so whenever so requested by the party of the second part; all proceedings, however, to be at the expense of the party of the second part.

It is further agreed and understood that the present agreement is not to be a completed or perfected sale, but to be in the nature of an agreement to sell until the full sum of one hundred and twenty thousand dollars due under this agreement shall have been paid, but that, in the meantime the said party of the first part is to make complete and final title to such specific pieces of land embraced by this agreement and to such persons as said parties of the second part may wish, provided that the price of such sales be paid direct to said party of the first part and be not less than one dollar per acre for tax lands and other high lands and twenty-five cents per acre for marsh lands.

(Signed)

..
..

THOS. G. SPARKS,
President, Atchafalaya Basin Lever District.
EDWARD WISNER,
JOHN M. DRESSER.

I hereby certify that the above and foregoing is a true copy of the original contract on record in the office of the Atchafalaya Basin Levee District.

A. V. DUBROCA,

Secretary.

Filed February 17, 1912.

J. G. LE BLANC,

Clerk of Court.

I hereby certify that the foregoing is a true and correct copy of the original act on file in my office and of record in Conveyance Book No. 75 at folio 120 under Entry No. 24833.

This 23rd day of the month of April, 1919.

J. A. GONSOLIN,

Clerk of Court.

Filed June 20th, 1919.

F. G. DECUR,

Dty. Clk.

32 Agreement Between Board of Commissioners of the Atchafalaya Basin Levee District and Wisner & Dresser, of Date April 11th, 1901, Attached and Made Part of Plaintiff's Amended Petition.

Filed June 20th, 1919, Marked "P-B"—B-1."

Confirmation of Title.

STATE OF LOUISIANA.

Parish of East Baton Rouge:

Whereas, on the 9th, day of July, 1900, the Board of Commissioners of the Atchafalaya Basin Levee District sold to Edward Wisner and John M. Dresser all the lands donated by Act of the General Assembly of the State of Louisiana to said Board of Commissioners of the Atchafalaya Basin Levee District, for which said Board has received the consideration in full in cash, this sale being made with the understanding that said Board of Commissioners of the Atchafalaya Basin Levee District were to lend itself, with all its rights, power, privileges and prerogatives to perfect its title or the title acquired under said agreement to all lands to which it could have claim, and the said Wisner & Dresser could justly lay claim to and to do so whenever so requested by said Wisner & Dresser, all proceedings, however, to be at the expense of the party of the second part. Now whereas, said Board of Commissioners have executed deeds follows:

1. To J. M. Dresser, deed dated February 28th, 1901, lands in Iberville and Lafourche Parishes, recorded in Lafourche March

12. 1901, Book 35 at page 324, and recorded in Terrebonne, March 12th, 1901, Book "VV" page 1.

2. To J. M. Dresser, deed dated March 17, 1902, land in Terrebonne Parish, recorded July 12, 1902, in Con. Book "XX" page 179.

3. To J. M. Dresser, deed dated June 30th, 1902, lands in Iberville Parish, recorded in Book 35 page 233, October 18th, 1902.

4. To J. M. Dresser, deed dated February 26th, 1902, recorded March 10th, 1902, in Conveyance Book #34 page 312, lands in Iberville Parish.

5. To J. M. Dresser, deed dated March 17th, 1902, lands in Iberville Parish, recorded July 14, 1902, Conveyance Book 35 page 106.

6th. To J. M. Dresser, deed dated February 26th, 1902, lands in Iberia Parish, recorded March 10th, 1902, in Conveyance Book 46 at folio 375.

7th. To J. M. Dresser, deed dated March 31, 1902, lands in Pointe Coupee Parish, recorded July 14, 1902, Entry No. 21578 page 591.

8th. To South Louisiana Land Co. Ltd., deed dated June 30th, 1902, lands in Pointe Coupee Parish, recorded October 20th, 1902, under No. 21708 page 165, et. seq.

9. To J. M. Dresser, deed dated August 30th, 1902, lands in Pointe Coupee Parish, recorded November 4th, 1902, in Conveyance 21726 page 189.

10. To J. M. Dresser, deed dated March 17th, 1902, lands in Assumption Parish, recorded July 14, 1902, in Conveyance Book F page 405.

11. To J. M. Dresser, deed dated February 26, 1902, lands in St. Martin and Assumption Parishes, recorded in Assumption March 10th, 1902, Book F page 74, and in St. Martin Book 58 folio 152 Conveyance No. 28835.

12. To J. M. Dresser, deed dated June 30th, 1902, lands in St. Martin Parish, recorded in Conveyance Book 58 at folio 503, No. 29203.

13. To J. M. Dresser, deed dated February 26th, 1902, lands in St. Martin Parish, recorded under No. 28836, Conveyance Book 58 at folio 159.

14. To J. M. Dresser, deed dated March 14, 1902, lands in St. Martin Parish, recorded in Conveyance Book 58 at folio 159 No. 28877.

34 To. To Edward Wisner, deed dated March 23, 1901, lands in Terrebonne Parish and Lafourche Parish, Book No. 35 of Conveyances Page 472 and in Terrebonne Parish, April 2nd, 1901, Book VV folio 77.

16. To Edward Wisner, deed dated March 15th, 1901, recorded March 22nd, 1901, in Book of Conveyances #19868 lands in Pointe Coupee Parish, La.

17. To George G. Metzger, deed dated February 14th, 1901, lands in Terrebonne and Lafourche Parishes, recorded in Lafourche Parish, April 25, 1901, in Conveyance Book 35 page 478, and in Terrebonne Parish April 25, 1901, in Conveyance Book XV page 257.

18. To George Metzger, deed dated December 14, 1900, lands in Terrebonne and Lafourche Parishes, deed dated December 14, 1900, lands in Terrebonne and Lafourche Parishes, recorded in Terrebonne, December 17, 1900, Conveyance Book UI page 387, and in Lafourche December 17, 1900, Book 34 page 704.

19th. To Terrebonne Land Co. Ltd., deed dated October 3, 1902, lands in Lafourche Parish, recorded October 18th, 1902, Conveyance Book No. 38 at folio 250, #19869.

20. To South Louisiana Land Co. Ltd., deed dated June 1, 1901, lands in St. Martins and Iberville Parishes, recorded in Iberville, December 10th, 1901, in Conveyance Book 34 entry 95 and in St. Martins June 17, 1901, Book 55 page 499 under No. 28390.

21. To South Louisiana Land Co. Ltd., Deed dated February 28th, 1901, lands in Pointe Coupee Parish, recorded March 15, 1901, No. 19859.

22. To South Louisiana Land Co. Ltd., lands in Assumption Parish, deed dated October 3, 1902, recorded October 18th, 1902, in Conveyance Book F page 541.

23. To South Louisiana Land Co. Ltd., lands in Assumption Parish, deed dated June 21, 1901, recorded August 2, 1901, in Book of Conveyance "E" page 526.

24. To South Louisiana Land Co. Ltd., lands in Iberia Parish, deed dated October 3, 1902, recorded October 17, 1902, *recorded October 17, 1902*, in Conveyance Book 47 page 547.

25. To South Louisiana Land Co., Ltd., lands in Iberia Parish, deed dated June 1st, 1901, recorded in Book of Conveyances #45 page 128.

26. To South Louisiana Land Co., lands in Lafourche and Terrebonne Parishes, dated June 21, 1901, recorded in Lafourche Parish, June 23, 1903, in Conveyance Book #38 page 612, and in Terrebonne Parish, May 1, 1903, in Conveyance Book YY folio 115.

27. To South Louisiana Land Co. Ltd., lands in Terrebonne and Lafourche Parishes, deed dated June 30th, 1902, recorded in Terrebonne Parish, October 18, 1902, in Conveyance Book XX folio 242, and in Lafourche Parish October 18, 1902, in Conveyance Book No. 38 at page 251.

28. To South Louisiana Land Co. Ltd., lands in Lafourche and Terrebonne Parishes, deed dated March 25, 1901, recorded in Lafourche Parish, April 25, 1901, in Book of Conveyance No. 35 page 458, and in Terrebonne Parish, April 25, 1901, in Book of Conveyance XV at page 245.

29. To South Louisiana Land Co. Ltd., lands in Iberville and St. Martin and Iberia Parishes, deed dated March 15, 1901, recorded in Iberville March 25, 1901, in Book of Conveyance No. 33 entry No. 128, in St. Martin Parish April 25, 1901, in Conveyance Book 35 of Conveyance No. 28140, 1, 2, folio 77, and in Iberia Parish, April 25, 1901, in Conveyance Book No. 11 at folio 113.

30. To South Louisiana Land Co. Ltd., lands in Pointe Coupee Parish, deed dated March 26, 1901, recorded March 22nd, 1901, in Book of Conveyance No. 19869.

31. To South Louisiana Land Co. Ltd., lands in Pointe Coupee Parish, deed dated December 5, 1902, recorded in Conveyance Book =21885, page 117, January 17, 1903.

32. To South Louisiana Land Co. Ltd., lands in West Baton Rouge Parish, deed dated June 37, 1901, recorded in Conveyance Book =9 folio 17 entry No. 36, October 18, 1901.

33. To South Louisiana Land Co. Ltd., lands in West Baton Rouge Parish, deed dated October 11th, 1901, recorded in Conveyance Book =9 folio 42 entry No. 37 October 18, 1901.

And all of said deeds having been made at the request of Wisner & Dresser.

And whereas, there is nothing of record in the various Parishes where the foregoing mentioned deeds are recorded to show the connection and the authorization to deed said lands contracted to Edward Wisner & John M. Dresser to any other parties.

Now, therefore, for the purpose of confirming the title to the lands conveyed in the above described deeds to John M. Dresser, Edward Wisner, George G. Metzger, South Louisiana Land Co. Ltd., and Terrebonne Land Co. Ltd., and their vendees or assigns, and in *so far* as the Board of Commissioners of the Atchafalaya Basin Levee District is concerned only for the purpose of assisting said parties in perfecting their chain of title, without incurring any liability whatsoever as warrantors or otherwise, in pursuance of a resolution passed by said Board of Commissioners of the Atchafalaya Basin Levee District, copy of which is hereto attached.

Victor M. Lefebvre, President of the Board of Commissioners of the Atchafalaya Basin Levee District, and John M. Dresser, and Edward Wisner, by John M. Dresser, his agent and attorney in fact, do hereby join together in this act of confirmation, for the purpose of quieting title and making a complete chain of title of record to the above mentioned parties to whom said Board has executed deeds herein described and their assigns and vendees.

Thus done and passed in the presence of J. F. Grouchy and A. Grouchy, Jr., witnesses of lawful age, and domicile, who hereunto sign their names, together with the said Parties, and me, Notary, this 11th day of April, 1904.

37 Made in quadruple.

VICTOR M. LEFEBVRE,

*President of the Board of Commissioners of the
Atchafalaya Basin Levee District.*

JOHN M. DRESSER,

EDWARD WISNER,

By JOHN M. DRESSER,

His Agent and Attorney in Fact,

LAWSON B. ALDRICH,

Notary Public.

Attest:

A. GROUCHY,

J. F. GROUCHY,

A. V. DUBROCA,

Secretary.

At a meeting of the Board of Commissioners of the Atchafalaya Basin Levee District, held on the 11th day of April, 1904, the following resolution was adopted:

Resolved, That Victor M. Lefebvre, President of said Board be empowered and authorized to join with Edward Wisner and John M. Dresser in a confirmation of thirty-three deeds made by the Board of Commissioners of the Atchafalaya Basin Levee District, described in said confirmation, running, some to J. M. Dresser, some to Edward Wisner, some to George G. Metzger, some to Terrebonne Land Co., Ltd., and some to South Louisiana Land Co., Ltd. There being nothing in the records to show that these deeds were made at the request of Edward Wisner and J. M. Dresser, the confirmation will show this and *and* make it a matter of record, confirming the title in the people to whom deeds were made to their vendees, said confirmation to be of even date with this resolution and a copy of this resolution to be attached and become a part thereof.

Port Allen, La.,

April 11th, 1904.

I, A. V. Dubroca, Secretary of the Board of Commissioners of the Atchafalaya Basin Levee District, do hereby certify that the foregoing is a true and correct copy of the resolution passed by said Board.

38 Witness my hand and official seal.

(Original signed)

A. V. DUBROCA,

Secretary.

STATE OF LOUISIANA,

Parish of East Baton Rouge:

I, Lawson B. Aldrich, Notary Public in and for the Parish of East Baton Rouge, State of Louisiana, do hereby officially certify that the above and foregoing is a true and correct copy of the original act of Confirmation of title passed before me on this 11th, day of April 1904 and of record in my notarial records at my office in the City of Baton Rouge, Louisiana.

In testimony whereof, witness my official signature and seal this 11th, day of April, 1904.

LAWSON B. ALDRICH,

Notary Public.

STATE OF LOUISIANA,

*Parish of Orleans,**City of New Orleans:*

April 10, 1904.

Be it known and remembered, That I, Edward Wisner of Toledo Ohio, do by these presents, make constitute and appoint John M. Dresser of New Orleans, La., my true and lawful attorney, in my name, place and stead to execute deeds and land contracts, to accept deeds, to sign confirmation of title, and to do any and all acts pertaining to real estate matters in the Parish of Iberia, that I could do if personally present, also hereby confirming any and all acts heretofore made by me said attorney, John M. Dresser, pertaining to real estate in the Parish of Iberia, State of Louisiana.

EDWARD WISNER

Done and passed before me, J. G. Eustis, notary public in and for the Parish and State aforesaid, and in the presence of J. P. Adams and W. B. Higgins, witnesses of lawful age, and domicile.

39

J. G. EUSTIS,

Notary Public.

Attest:

J. P. ADAMS,

W. B. HIGGINS.

Filed April 27th, 1904.

J. G. LE BLANC,

Clerk.

I hereby certify that the foregoing is a true and correct copy of the original act on file in my office and of record in Conveyance Book No. 53 at folio 212, entry No. 16456.

This 22nd day of the month of April, 1919.

J. A. GONSOULIN,

Clerk of Court, Iberia Parish, La.

40 *Plaintiff's B-1, Attached and Made Part of Plaintiff's Amended Petition.*

STATE OF LOUISIANA.

Parish of East Baton Rouge:

Whereas on the 9th day of July, 1900, the Board of Commissioners of the Atchafalaya Basin Levee District sold to Edward Wisner and John M. Dresser all the lands donated by act of the General Assembly of the State of Louisiana to said Board of Commissioners of the Atchafalaya Basin Levee District, for which said Board has the consideration in full in cash, this sale being made with the understanding that said Board of Commissioners of the Atchafalaya Basin Levee District were to lend itself, with all its rights, power and privilege and prerogatives to perfect its title or the title acquired under said agreement to all lands which it could have and the said Wisner and Dresser could justly lay claim to and to do so whenever so requested by said Wisner and Dresser, all proceedings however, to be at the expense of the party of the second part.

Now, whereas, said Board of Commissioners have executed deeds as follows:

1. To J. M. Dresser deed dated February 28th, 1901, lands in Terrebonne and Lafourche Parishes, recorded in Lafourche March 12th, 1901, Book 35 page 324 and recorded in Terrebonne March 12, 1901, Book VV page 1.

2. To J. M. Dresser deed dated March 17th, 1902, lands in Terrebonne Parish, recorded July 12, 1902, in Conveyance Book XX page 170.

3. To J. M. Dresser deed dated June 30th, 1902, lands in Iberville Parish, recorded in Book 35 page 233 October 13, 1902.

4. To J. M. Dresser, deed dated February 26th, 1902, recorded March 10th, 1902, in Conveyance Book 34 page 312, lands in Iberville Parish.

5. To J. M. Dresser deed dated March 17, 1902, lands in Iberville Parish, recorded July 14, 1902, conveyance No. 35 entry 106.

41 6. To J. M. Dresser, deed dated February 26th, 1902, lands in Iberia Parish, recorded March 10, 1902, in Conveyance Book No. 46 page 375.

7. To J. M. Dresser, deed dated March 31, 1902, lands in Parish of Pointe Coupee, recorded July 14, 1902, entry No. 21578, page 591.

8. To South Louisiana Land Co., Ltd., deed dated June 30, 1902, lands in Pointe Coupee Parish, recorded October 20th, 1902, under No. 21708, page 165, et. seq.

9. To J. M. Dresser, dated August 30th, 1902, lands in Parish of Pointe Coupee, recorded November 4, 1902, in Conveyance 21726 page 189.

10. To J. M. Dresser, deed dated March 17th, 1902, lands in Assumption Parish, recorded July 14, 1902, in Conveyance Book F page 405.

11. To J. M. Dresser, deed dated February 26th, 1902, lands in St. Martin and Assumption Parishes, recorded in Assumption Parish March 10th, 1902, Book F page 74 and in St. Martin Parish, Book 58 folio 158 Conveyance No. 28835.

12. To J. M. Dresser, deed dated June 30th, 1902, lands in St. Martin Parish, recorded in Conveyance Book 58 at folio 503, No. 29203.

13. To J. M. Dresser, deed dated February 26th, 1902, lands in St. Martin Parish recorded under No. 28836 Conveyance 58 folio 159.

14. To J. M. Dresser deed dated March 14, 1902, lands in St. Martin Parish, recorded in Conveyance 58 folio 159 No. 28877.

15. To Edward Wisner deed dated March 23, 1901, lands in Terrebonne and Lafourche Parishes, recorded in Parish of Lafourche April 25, 1901, in Conveyance Book 35 page 472, and in Terrebonne, April 2nd, 1901, Book XV folio 77.

16. To Edward Wisner deed dated March 15, 1901, recorded March 22nd, 1901, in Book of Conveyance 19868 Lands in Pointe Coupee Parish, La.

17. To George G. Metzger, deed dated February 14, 1901, lands in Terrebonne and Lafourche Parishes recorded in Lafourche Parish April 25, 1901, in Conveyance Book 35 page 478, and in Terrebonne Parish, April 25, 1901, in Conveyance Book XV folio 257.

18. To George G. Metzger, deed dated December 14, 1900, lands in Terrebonne and Lafourche Parishes recorded in Terrebonne, December 17, 1900, Conveyance Book XV folio 387 and in the Parish of Lafourche, December 17, 1900, Book 35 folio 704.

19. To Terrebonne Land Co. Ltd., deed dated October 3rd, 1902, lands in Lafourche Parish, recorded October 18, 1902, Conveyance Book 38 page 250.

20. To South Louisiana Land Co. Ltd., deed dated June 1, 1901, lands in St. Martin and Iberville Parishes, recorded in Iberville, December 10th, 1901, in Conveyance Book 34 folio 95 and in St. Martin, June 17, 1901, Book 55 page 499, under No. 28390.

21. To South Louisiana Land Co. Ltd., deed dated February 28th, 1900, (1901) lands in Pointe Coupee Parish, recorded March 15, 1901, No. 19859.

22. To South Louisiana Land Co. Ltd., lands in Assumption Parish, deed dated October 3rd, 1902, recorded October 18, 1902, in Book of Conveyance F page 544.

23. To South Louisiana Land Co. Ltd., lands in Assumption Parish, dated June 21, 1901, recorded August 2nd, 1901, in Book of Conveyance E page 526.

24. To South Louisiana Land Co. Ltd., lands in Iberia Parish, deed dated October 3rd, 1902, recorded October 17, 1902, in Conveyance Book 47 page 447.

25. To South Louisiana Land Co. Ltd., lands in Iberia Parish, deed dated June 1, 1901, recorded in Book of Conveyance 45 folio 128.

26. To South Louisiana Land Co. Ltd., lands in Lafourche and Terrebonne Parishes, dated June 21, 1901, recorded in Lafourche Parish since — 23, 1903, in Conveyance Book 38 page 612, and in Terrebonne Parish May 1, 1903 in Con Book Conveyance 43 — Book YY folio 115.

28. To South Louisiana Land Company, Limited, land in Lafourche and Terrebonne Parishes, deed dated March 25, 1901, recorded in Lafourche Parish April 25, 1901, in Book of Conveyance 35 folio 485, and in Terrebonne Parish April 25, 1901, in Book VV folio 215.

29. To South Louisiana Land Company, Limited, lands in Iberville and St. Martin and Iberia Parishes, deed dated March 15, 1901, recorded in Iberville, March 25, 1901, in Book of Conveyance 33 entry No. 128 in St. Martin Parish April 25, 1901, in Conveyance Book 55 conveyance No. 281401, folio 77 and in Iberia Parish, April 25, 1901, in Conveyance Book 44 folio 413.

30. To South Louisiana Land Co. Ltd., lands in Pointe Coupee Parish, deed dated March 16, 1901, recorded March 22nd, 1901, in Book of Conveyance No. 19869.

31. To South Louisiana Land Co. Ltd., lands in Pointe Coupee Parish, deed dated December 5, 1902, recorded in Conveyance Book No. 21885 page 447 January 17, 1903.

32. To South Louisiana Land Co. Ltd., lands in West Baton Rouge Parish, deed dated June 21, 1901, recorded in Conveyance Book No. 9 folio 47 entry No. 36 October 18, 1901.

33. To South Louisiana Land Co. Ltd., lands in West Baton Rouge Parish, deed dated October 11, 1901, recorded in Conveyance Book 9 folio 48 entry No. 37, October 18, 1901, and all of said deeds having been made at the request of Wisner and Dresser.

And whereas there is nothing of record in the various Parishes, where the foregoing mentioned deeds are recorded to show the connection and the authorization to deed said lands contracted to Wisner and Dresser and to any other parties.

Now, therefore, for the purpose of confirming the title to lands conveyed in the above described deeds to John M. Dresser, Edward

Wissner, George G. Metzger, South Louisiana Land Co. Ltd. and Terrebonne Land Co., Ltd., and their vendees or assigns, and insofar as the Board of Commissioners of the Atchafalaya Basin Levee District is concerned only for the purpose of assisting said parties in perfecting their chain of title without incurring any liability whatsoever as warrantors or otherwise in pursuance of a resolution of said Board of Commissioners of the Atchafalaya Basin Levee District, copy of which is hereto attached, Victor M. Lefebvre, President of the Board of Commissioners of the Atchafalaya Basin Levee District and John M. Dresser and Edward Wissner and John M. Dresser, his agent and attorney in fact do hereby join together in this act of confirmation of title of record to the above mentioned parties, to whom said Board has executed the deeds herein described and their assigns and vendees.

Thus done and passed in the presence of J. F. Grouchy, and A. Grouchy, Jr., witnesses of lawful age and domicile, who hereunto sign their names together with the said Parties and me, notary, this 11th day of April, 1904.

Made in quadruple

VICTOR M. LEFEBVRE,

*President of the Board of Commissioners of the
Atchafalaya Basin Levee District.*

JOHN M. DRESSER,

EDWARD WISSNER,

By JOHN M. DRESSER

His Agent and Attorney in Fact.

LAWSON B. ALDRICH,

Notary Public.

Attest:

J. F. GROUCHY,

A. GROUCHY, Jr.,

A. V. DUBROCA,

Secretary.

At a meeting of the Board of Commissioners of the Atchafalaya Basin Levee District held on the 11th day of April, 1904, the following resolution was adopted:

Resolved that Victor M. Lefebvre, president of said Board be empowered and authorized to join with Edward Wissner and John M. Dresser in a confirmation of thirty three deeds made by the Board of Commissioners of the Atchafalaya Basin Levee District, described in said confirmation running some to J. M. Dresser, some to Edward Wissner, some to George G. Metzger, some to Terrebonne Land Co. Ltd., and some to South Louisiana Land Co. Ltd., there being nothing in the records to show that there deeds were made at the request of Edward Wissner and John M. Dresser, the confirmation will show this, and make it a matter of record, confirming the title in the people to whom deeds were made and their

vendees said confirmation to be of even date with this resolution and a copy of this resolution to be attached and become a part thereof.

Port Allen, La.,

April 11, 1904.

I, A. V. Dubroca, Secretary of the Board of Commissioners of the Atchafalaya Basin Levee District, do hereby certify that the foregoing is a true and correct copy of the resolution passed by said Board.

Witness my hand and official seal.

(Original Signed)

A. V. DUBROCA,

Secretary.

STATE OF LOUISIANA,

Parish of East Baton Rouge.

I, Lawson B. Aldrich, notary public in and for the Parish of East Baton Rouge, State of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of the original act of confirmation of title passed before me on this 11th day of April, 1904, and of record in my notarial records at my office in the Parish of East Baton Rouge, Louisiana.

In testimony whereof witness my official signature and seal this 11th day of April, 1904.

LAWSON B. ALDRICH,

Notary Public.

16 STATE OF LOUISIANA,

Parish of Orleans,

City of New Orleans:

April 10, 1904.

Be it known and remembered that I, Edward Wisner of Toledo, Ohio, do by these presents make, constitute and appoint John M. Dresser of New Orleans, La., my true and lawful attorney in my name, place and stead to execute deeds and land contracts to accept deeds, to sign confirmation of title, and to do any and all acts pertaining to real estate matters in the Parish of St. Martin, that I could do if I were personally present, also hereby confirming any and all acts heretofore made by my said attorney John M. Dresser pertaining to real estate in the Parish of St. Martin, State of Louisiana.

EDWARD WISNER,

Done and passed before J. G. Eustis, Notary Public, in and for the said Parish and State in the presence of J. P. Adams, and W. B. Higgins, witnesses of lawful age and domicile.

J. G. EUSTIS,

Notary Public.

Attest:

L. P. ADAMS,

W. B. HIGGINS,

Recorded April 26, 1904.

STATE OF LOUISIANA,

Parish of St. Martin:

I, Ignace Bienvenue, Deputy Clerk of Court and Ex-Officio Deputy Recorder in and for the Parish of St. Martin, Louisiana, do hereby certify that the above and foregoing is a true and correct copy of record in Conveyance Book 61 at folio 53 under No. 30388.

In faith whereof witness my hand and seal of office at St. Martinsville, La., this 23 day of April, 1919.

IGNACE BIENVENUE

Deputy Clerk of Court.

- 17 *Deeds from South Louisiana Land Company, Limited, to Atchafalaya Land Company, Limited, of Date December 30th, 1908, Attached and Made Part of Plaintiff's Amended Petition.*

Filed June 20th, 1919, Marked P-C, PC-1.

STATE OF LOUISIANA,

Parish of Orleans:

Be it known, That, on this the 20th, day of December A. D., 1908, before me, J. G. Eustis, a notary public, in and for the Parish and State aforesaid, personally came and appeared Edward Wisner, acting herein as president of the South Louisiana Land Company, Limited, of New Orleans, Louisiana, duly authorized to deed land for said Company, who declared and acknowledged, that for and in consideration of Twelve hundred, (\$1,200.00) Dollars cash in hand paid, the receipt whereof is hereby acknowledged, they have sold, conveyed, and delivered; and by these presents do sell, bargain, sell, assign, transfer, set over and deliver, with full warranty of title unto Atchafalaya Land Company, of New Orleans, Louisiana, J. M. Dresser, its vice-president, hereby accepting the sale for said Company, and its successors and assigns, the following property, together with the improvements and appurtenances thereunto belonging, situated in the Parish of Iberia, State of Louisiana, to-wit: Frac. N. E. $\frac{1}{4}$, Sec. 26, in 4th Ward; Frac. Sec. 35, T. 11, S. R. 8 E., N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Sec. 18; Frac. E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ or lot 3, Section 24, Lots 1, 2, 3, 4, and 5, Sec. 28, T. 12, S. R. 8 E., E. $\frac{1}{2}$ of E. $\frac{1}{2}$, Sec. 2, lot 3, Sec. 3, lot 5 Sec. 13, All Sec. 14, except lot 5, T. 12, S. R. 9 E.; N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, Sec. 1, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, Sec. 2; W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Sec. 3, lots, 2, 4, 5, 10, 11, S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ & N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ Sec. 4, that part of W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ & N. E. $\frac{1}{4}$ of Sec. 5, lying E. of Hog Island Pass; frac. N. E. $\frac{1}{4}$, Sec. 6, lots, 1, 2, 3, & 4, Sec. 8; S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ Sec. 10; W. $\frac{1}{2}$, Sec. 11, S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ Sec. 14, lot 1, Sec. 17; lot 1 or N. E. $\frac{1}{4}$ Frac. $\frac{1}{4}$ Sec. 18; Frac. Sec. 21, S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ or lot 18, 5, & N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Sec. 27, T. 12, S. R., 10, E.

E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, Sec. 1, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Sec. 6, E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, Sec. 34, T. 12, S. R. 11 E.

N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Section 6, T. 12, S. R. 12, E.

N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Sec. 1; E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ & S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Section 3, T. 13, S. R. 11 E.

Tract of Rosa Johnen, bounded N. Road, E. Louvierre, S. by Dugas, W. by Mitchell, 1 acre.

Tract of Cyrcle Alexander, bounded N. by Bernard, E. by Louvierre, S. by Bonin, and West by Fournet, 25 acres.

Tract of Alexander Broussard, 20 acres of swamp, bounded N., by Broussard; E., by Blank, S. by Gonsoulin, and west by Teche;

Tract of Jack Arvil, bounded north by Breaux, E. by Breaux, S. by Judis, and west by Teche, 23 acres.

Tract of Edwill Edwin, 5 acres, bounded N. by Natt, S. by Hebert, E. by Edwin, and west by Edwin, being in the 4th Ward, 5 acres.

Tract of Adille Rosa Olivier, et. als., 40 acres, bounded N. by Hebert, E. by Olivier, S. by Levis, and west by Olivier.

Tract of Joseph Williams $4\frac{1}{2}$ acres in the 4th Ward bounded N. by Natt, S. by Hebert, E. by Edwin, and west by Edwin.

Tract of E. A. Pharr, 80 acres in 4th Ward, bounded N. by Hickley, E. by School, S. by Long and west by Broughton.

Tract of B. D. Dauterive, 1 lot in 4th ward, 30 feet front by 100 feet back, bounded N. by Pellet, East by Sonathe, S. by Dauterive and west by Dauterive.

All in the southwestern Land District west of the Mississippi River.

This deed is made subject to all prior conveyances to the Schwing Lumber and Shingle Company, Limited, of all of the cypress timber on said lands, with the right to enter on said lands and remove said timber any time up to January 1st, 1923.

The South Louisiana Land Company, Limited, also sells all of its rights to the lands in Iberia Parish, whether they are included in this deed or not by definite description, and the said South Louisiana Land Company, Limited, hereby agrees, should anything be omitted, to convey the same by definite description whenever called upon to do so, and the said South Louisiana Land Company, Limited, referring to the records of Iberia Parish, hereby does convey any and all landed interest that it may have in said Parish whether definitely described or not, reference being made to the record books of said Parish for said description.

To have and to hold the said above described property, unto the said purchaser, its successors and assigns forever.

The parties to this act agree to dispense with the production of the certificate of mortgage required by Article 3364 of the Civil Code of the State of Louisiana and exonerate me, the said notary from any liability in the premises.

Thus done and passed in the presence of A. S. Dusenbury and A. B. Graves, witnesses of lawful age and domiciled, who have heretofore signed these presents, together with the said parties and me, the said Notary.

(Signed)

SOUTH LOUISIANA LAND CO., LTD.

By EDWARD WISNER,

President.

ATCHAFALAYA LAND CO., LTD.

By J. M. DRESSER,

Vice-Pres.

Attest:

A. S. DUSENBURG,

A. B. GRAVES,

(Signed)

J. G. EUSTIS,

Notary Public.

Filed January 29th, 1909.

(Signed) J. G. LE BLANC,

Clerk.

I hereby certify that the foregoing is a true and correct copy of the original act on file in my office and of record in Conveyance Book No. 65 at folio 451 Entry No. 20798.

This 22nd, day of the month of April, 1919,

J. A. GONSOLIN,

Clerk of Court, Iberia Parish, La.

Filed June 20th, 1919.

F. G. DECUIR,

Dist. Clk.

50 *Plaintiff's C-1, Attached and Made Part of Plaintiff's Amended Petition.*

STATE OF LOUISIANA,

Parish of Orleans:

Be it known that on this, the 30th day of December, 1908, before me, J. G. Eustis, a notary public, in and for the said Parish and State, personally came and appeared, Edward Wisner, acting herein as president of the South Louisiana Land Co., Limited, of New Orleans, Louisiana, duly authorized to deed land for said Company, who declared and acknowledged that for and in consideration of Ten thousand three hundred and seventy (\$10,370.00) dollars, cash in hand paid, the receipt whereof is hereby acknowledged they have sold, conveyed, delivered and by these presents do sell, bargain, assign, transfer, set over and deliver, with a full warranty of title unto Atchafalaya Land Company, Limited, of New Orleans, Louisiana, J. M. Dresser, its vice-president, hereby accepting the sale for said Company, and its successors and assigns, the following property, together with the improvements and appurtenances thereunto belonging, situated in the Parish of St. Martin, State of Louisiana, to-wit:

Lot or radiating Sec. 3, Lots or radiating Sections 4 and 5 except a strip 200 feet wide for a right of way sold to the M. L. & T. R. R. & S. S. Co., March 9th, 1906, and except 10.33 acres lying along the bank of the Atchafalaya River in Secs. 4 and 5, sold to M. L. & T. R. R. & S. S. Co., March 9th, 1906, lot or radiating Sec. 6.

T. 8 S., R. 7 E.

Lots or radiating Secs. 3 to 17 inclusive, lots or radiating sec. 27 and 28, lots 1 & 2, Sec. 62, Lots 1, 2, 3, 4, 5, 6, 7, & 8, Sec. 63, Sec. 64, all of sec. 65, lots 1 and 2, Sec. 70; Fre. Secs. 71 and 72 Fre. Sec. 73 and Sec. 75, less a strip 200 feet out of said Sec. 73 and 75 sold to the M. L. & T. R. R. & S. S. Co., on March 9th, 1906,

E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ Sec. 74, Fre. S. W. $\frac{1}{4}$ Sec. 75, Fre. Sec. 79, W. of Bayou Alabama; W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$,

E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ & S. $\frac{1}{2}$, Sec. 80, all sec. 81, lot 3, Sec. 81, lot 3 Sec. 82, all sec. 83; lot 1 & Fre. E. $\frac{1}{2}$ lot 2, N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and lots 3 and 4 Sec. 84, Fre. N. W. $\frac{1}{4}$ & lot 4 Sec. 85.

T. 8 S., R. 8 E.

Lot or radiating Secs. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.

T. 9 S., R. 8 E.

All of the foregoing being in the Southeastern Land District of Louisiana, west of the Mississippi River.

S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Sec. 2, S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ Sec. 11, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, Sec. 23, E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Sec. 26, lot 8, Sec. 26 T. 8 S. R. 7 E.

E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, Sec. 1, N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, Sec. 12. T. 9 S. R. 6 E.

All of the un-surveyed portion of sections 1, 11, 13, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Sec. 7, Lot 1, Sec. 11 $\frac{1}{2}$ of lot 6 Sec. 11, S. $\frac{1}{2}$ Sec. 23, N. E. $\frac{1}{4}$ Sec. 24, S. W. $\frac{1}{4}$ Sec. 28.

T. 9 S., R. 7 E.

Fre. Sec. 7, N. $\frac{1}{2}$ Sec. 18, E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ Sec. 20, S. $\frac{1}{2}$ Sec. 21, S. W. $\frac{1}{4}$ Sec. 22, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ Sec. 27, N. $\frac{1}{2}$ Sec. 28, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ Sec. 33, N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Sec. 36, undivided half interest in N. $\frac{1}{2}$ Sec. 29.

T. 9 S., R. 8 E.

Lot 1 Section 20, lots 3, 4, 5, 6, 7, 8, 9, & 10, Sec. 24 lots 7 and 8, Section 27, lots 2, 3, 5, 6, 7, 8, 9, 10, 11, & 12, Section 28, Lots 3 and 4 Section 32, Lots 2, 3, 7, 9, and 13, Section 33.

T. 9 S., R. 9 E.

E. $\frac{1}{2}$ of Section, 36, T. 10, S. R. 7 E. W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Section 4, N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Section 17, N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ Section 18, S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Section 31, S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Section 32, N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Section 33, Lot 1 Section 35, lot 8, Section 36, undivided half interest in S. W. $\frac{1}{4}$ Section 27.

T. 10 S., R. 8 East.

Fractional Section 1, Fractional Section 3; lots, 1, 2, 3, 4, and 5 Section 4, lots 2, 4, 8, 9, and 11, Island in the S. E. $\frac{1}{4}$ being lot 12, Section 5, E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Section 6; N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Section 7, N. $\frac{1}{2}$ of N. $\frac{1}{2}$ and lots 1, 5, and 7, Section 8, Frae. W. $\frac{1}{2}$ Section 9 except N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, lots 2 and 3, Section 9, lots 1, 2, and 4, and N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ Section 15, lots 2, 3, and 4, Section 24, lots, 7, 8, 9, and 10, or S. E. $\frac{1}{4}$ Section and S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Sec. 24; S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and N. $\frac{1}{2}$ Sec. 25, N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ & E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Section 26; S. $\frac{1}{2}$ Sec. 28, Pre. E. $\frac{1}{2}$ Sec. 32, N. $\frac{1}{2}$ and Sec. $\frac{1}{4}$ Sec. 33, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ Sec. 34, lot 5 Sec. 35, lots 6 & 7, Sec. 36, part of the N. W. $\frac{1}{4}$ Sec. 36, lots or radiating sections 37 to 51 inclusive, lot or radiating Section 55, lot 5 Sec. 33.

T. 10 S., R. 9 E.

All fractional Sec. 7, lots 1, 2, 3, 4, 7, 8, 9, 10, and 11, Sec. 18, E. $\frac{1}{2}$ of E. $\frac{1}{2}$, W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and lots 1, 2, 3, 4, and 5, Sec. 19, lots 3, 4, 7, and 8, Sec. 20, lots, 1, 2, 4, and 5, Section 29, all frae. Sec. 30, N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$. Lots, 1, 2, 3, 4, 5, and 6, and N. E. $\frac{1}{4}$ Sec. 31, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Sec. 32, lots or radiating Sec. 62 and 63, lots or radiating Sections 122 to 136 inclusive, lot 3 Sec. 29.

T. 10 S., R. 10 E.

Pre. N. W. $\frac{1}{4}$ Sec. 29; N. & W. of Bayou; S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Sec. 19, N. E. $\frac{1}{4}$ Sec. 30

T. 11 S., R. 11 E.

N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ Sec. 10; S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ Sec. 15, S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Section 16, N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Section 20, N. W. $\frac{1}{4}$, S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Section 24, lots 4, 5, 6, sec. 26, W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ Sec. 34, W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, Sec. 35.

T. 13 S., R. 11 E.

Lot 3, Sec. 4, S. $\frac{1}{2}$ of S. $\frac{1}{2}$, Sec. 7, Lots 3 and 4, S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and Fre. N. E. $\frac{1}{4}$ Sec. 8, N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Sec. 17, N. E. $\frac{1}{4}$ Sec 19, W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Sec. 21, S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Sec. 27, undivided half interest in west $\frac{1}{2}$ of N. E. $\frac{1}{4}$, E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Sec. 17, undivided half interest in N. — of N. W. $\frac{1}{4}$ Sec. 8.

T. 13 S., R. 12 E.

W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Sec. 2, N. W. $\frac{1}{4}$ Sec. 10, Lots 4 and 5, Sec. 22; lots 7 and — W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$; E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Section 23, E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Sec. 24, W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Sec. 25, all that part of Section 26 north and east of lake except N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Sec. 27, lot 2 sec. 28, lot 5 sec. 35 N. W. $\frac{1}{4}$ Sec. —, S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and S. $\frac{1}{2}$ Sec. 36.

T. 14 S., R. 11 E.

S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$; N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ Sec. 4, E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ Sec. 5, S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Sec. 9, N. W. $\frac{1}{4}$ Sec. 10, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 12 S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Sec. 25, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Sec. 29; S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ Sec. 32, E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ Sec. 35, undivided half interest in N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Section 24.

T. 14 S., R. 12 E.

N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ Sec. 29; E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ Section 31, Fre. S. $\frac{1}{2}$ Sec. 32, Tracy of 70 acres in Fre. Sec. 29; Tract of 56 acres in Sections 20 and 21, being Emma and Adelia Olivier tract, also Auguste Verret tract, 96 acres in Section- 20 and 21 Stephen Olivier tract being part of Section 17, S. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Sec. 18.

T. 14 S., R. 13 E.

Lot 5, N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and N. $\frac{1}{2}$ Section 1, N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and Fre. W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Section 2, Fre. Sections 3 and 5.

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T. 15 S., R. 11 E.

S. E. $\frac{1}{4}$ Section and E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Sec. 2, S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ Sec. 5; N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Section 11, all Sec. 25 east of Flat Lake.

T. 15 S., R. 12 E.

Lot 3 or all section 5 west of Bayou Long, lots 5 and 7 and S. W. 1/4 Sec. 6, lot 2 Section 22.

Lot 15 S., R. 13 E.

All the foregoing in Southwestern Land District west of Mississippi River.

Tract of E. F. Gibson, bounded N. De Blanc, S. Dugas, and W. by Banker, being 80 acres in T. 10, S. R. 7 E.

Tract of Simon Stephen, bounded N. by Plumb, S. by Verret, E. by Allen and W. by Bernard, 75 acres.

Tract of Edwin Lefore, bounded N. & E. by Grand River, S. by Castague and W. by Trahan being 25 acres.

Tract of Eugene Wiltz, 41 acres, bounded N. by Melancon, E. by Tourtran, S. by A. Fontenette and W. by John Allison.

Tract of Louis & Aug. Albert, 70 acres, bounded north by Dugas, E. by Citizens' Bank, W. by Le Blanc and S. by Flory.

Tract of Lucien Mendoza, 5 acres, bounded N. Diamond, S. by Bayou Chene, E. by Terrell, and west by Tarleton.

Tract of Jean Baptiste Theriot, 6 acres, bounded by N. Chene, W. by Verret, E. by Case, and S. by McCauley.

Tract of Ignace Lee Dugas, 40 acres, bounded N. by Banker, E. by Duprier, S. & W. by Bernard.

Tract of A. J. Verret, 77 arpents, bounded N. by McCauley, S. by Verret, E. by Walker and W. by Broussard, 159 arpents, bounded N. by Broussard, E. by Broussard, S. by Carlin, and west by Crook Chene, 12 arpents, bounded N. by Verret, E. by Crook Chene, W. by Verret, and S. by Bayou Chene, 6 arpents bounded N. by Grand

55 River and E. by Tensas.
Tract of Emelie Foret, 15 arpents, bounded N. by Kitt-
ridge, and E. by S. Humas.

Tract of Mme. Emile Verret, 4 acres, bounded N. by Crook Chene, E. by Theriot, S. by McCauley, and west by Mendoza.

Tract of J. P. Mendoza, 160 acres, bounded N. by School Lands, S. & E., by Plumb, and west by Case, 80 acres, bounded N. by Case, S. & E. by Plumb and W. by Case, 80 acres, bounded N. & E., by Lafontaine, S. by Plumb and W. by Case.

Tract of Rps. Euzebe Louis, 129 1/2 acres, bounded N. by Fontenette, E. by Louis S. & W. by Narcisse.

Tract of Shaddell & Lacaze, bounded N. by Grand River, E. by Martin, S. by Plaquemine, W. by Tensas, being 360 acres, or lots 1, 2, 3, 4, 9, 10, 11, and 12, Section 27, T. 9, S. 9 E.

Tract of Clement Frion, 135 acres, bounded N. by Larson, S. & E. by Plumb and W. by Mendoza.

Tract of Ursin Hebert, 50 acres, bounded S. by Hebert, E. by Robichaux, and W. by Lastrappe.

Tract of John Luc, 30 acres, bounded N. by Larose, W. S. & E., by Atchafalaya River.

Tract of Reps. Philomene Theriot, 3 acres, bounded N. by Sonier, W. by Sonier, E. by Berard, S. by Byria.

Tract of Wid. Vallery Guidry, $\frac{7}{4}$ acres, bounded N. & E. by Public Land, S. by Hebert, W. by Lettillier, being S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, and N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Section 18.

T. 8 S., R. 7 E.

Tract of F. D. Broussard, 120 arpents, bounded N. by McCauley, S. & E. by Theriot, and W. by Crook Chene.

Tract of Emelia Foret, 15 arpents, bounded N. by Kittridge, E. & S. by Theriot, S. by Humas.

Tract of D. Roy and A. Durio, bounded N. by Bush, East by Thibodeaux, and S. by Bush, west by —.

Tract of B. C. Chestania, 40 arpents, bounded N. by Grand River, E. by Bullirce, S. by Ralley and W. by Leboe.

56 Tract of Louis Narcisse, bounded N. by Rousseau, S. by Duplain, E. by Barras and W. by Levert.

Tract of Eugene F. Sonier, bounded N. & W. by Thibodeaux, S. by Public Land, and E. by Cormier.

Tract of J. J. Lake, bounded N. & E. by E. Bernard, E. by Pyle-Bayou; W. & S. by Larampe, being 94 acres, also a tract of 38 acres bounded N. by Burncard, E. by Burnard, W. & S. by Larampe.

Tract of John Rios, 3.38 acres, bounded N. by J. Landry, E. by Leonormand, S. by Road and W. by Landry.

Tract of Ben Kidder, 34 acres, bounded N. by Durio, E. by Loremond, S. by Begnaud, and W. by Thibodeaux.

Tract of Wid. T. Loremond, 40 acres, bounded N. & E. by Dupuy, S. & W. by Durio.

Tract of Dolsey Broussard, 37 acres, bounded N. by Dugas, E. by Bank and W. & S. by Marguez.

Tract of G. W. Allen, 250 acres, bounded W. by Broughton, N. by Brossard, E. by Chene.

Tract of Jos. Journe, 9 acres, bounded N. by Journe, E. by Rosilier, S. by Brothers, and W. by Darters.

Tract of Est. Michel Turpeau, 20 acres, bounded N. by Hebert, E. by Dugas, and W. & S. by Iberia.

Tract of Arthur Hebert, 41 acres, bounded N. by Bijeaux, E. & W. by Urseau S. by Patin.

Tract of Henry Le Blanc, in 4th ward, bounded N. by Breaux, S. & E. by Oubre, and W. by Dupois.

Tract of Lastrappes and Warren, bounded N. by McCauley, E. by Allen and S. by Ferray and W. by Lauve.

Tract of H. H. Shadel, bounded N. by Chene, S. by Chene, E. by Cross and W. by Carlin.

Tract of Francois Eugene, 1 acre, bounded north by Public Road, E. & W. by Turpo, & S. by E. Orso.

Tract of Haley Cotton, 70 acres, in Secs. 13 and 14 in T. 11, S. R. 8 E. bounded N. by H. Vaughn, W. by Grand Bayou, being part bought at tax sale as property of F. & U. Broussard, lying east of Grand Bayou.

57 This deed is made subject to all prior conveyances to the Schwing Lumber and Shingle Company, Limited, of all of the cypress timber of said lands, with the right to enter on said land and remove said timber any time up to January 1st, 1923.

The South Louisiana Land Company, Limited, also sells all of its rights to lands in St. Martin Parish, whether they are included in this deed or not by definite description, and said South Louisiana Land Co., Ltd., hereby agree should anything be omitted to convey the same by definite description whenever called upon to do so, and said South Louisiana Land Company, Limited, referring to the records of St. Martin Parish, hereby does convey *and* any and all landed interests that it may have in said Parish, whether definitely described or not, reference being made to the record books of said Parish for said description.

To have and to hold the said above described property unto the said purchaser, its successors and assigns forever.

The parties to this act agree to dispense with the production of the certificate of mortgage required by article 3364 of the Civil Code of this State and to exonerate me, said Notary, from all liability in the premises.

Thus done and passed, in the presence of A. E. Dusenbury and A. B. Graves, witnesses of lawful age and domiciled, who hereunto sign their names, together with the said parties and me, said notary.

SOUTH LOUISIANA LAND CO., LTD.,

By EDWARD WISNER,

President,

ATCHAFALAYA LAND CO., LTD.,

By J. M. DRESSER,

Vice-President,

Attest:

A. T. DUSENBURY,

A. B. GRAVES,

J. G. EUSTIS,

Notary Public.

58 STATE OF LOUISIANA,

Parish of St. Martin.

I, Ignace Bienvenue, Deputy Clerk of Court and ex-Officio Deputy Recorder in and for the Parish of Saint Martin, La., do hereby certify that the above and foregoing is a true and correct copy of the original recorded January 29th, 1909 in Book 70 folio 501 under No. 34068 of Conveyances.

In faith whereof, witness my hand and seal of office at Saint Martinsville, Louisiana, this 23rd day of April, 1919.

IGNACE BIENVENUE,

Deputy Clerk of Court.

Filed June 20th, 1919.

F. G. DECUR,

Deputy Clerk of Court.

59 *Deeds from South Louisiana Land Company, Limited, and North Louisiana Land Company to Schwing Lumber & Shingle Company, Limited, Dated November 23, 1907, Attached and Made Part of Plaintiff's Amended Petition, Marked P. D. & D. 1.*

Filed June 20th, 1919.

STATE OF LOUISIANA.

Parish of Orleans:

Personally came and appeared before me, John G. Eustis, a notary public, duly commissioned and qualified in and for the City of New Orleans, State of Louisiana, the South Louisiana Land Company, a corporation organized and existing under the laws of the State of Louisiana, herein represented by its president, Edward Wisner, duly authorized to act herein by virtue of a resolution of the Board of Directors of the said South Louisiana Land Company, Limited, which resolution is hereto attached; The North Louisiana Land Company, Limited, a corporation organized and existing under the laws of the State of Louisiana, represented herein by Edward Wisner, President duly authorized to act herein by virtue of a resolution of the Board of Directors of the North Louisiana Land Company, Limited; and the co-partnership of Wisner and Dresser, herein represented by Edward Wisner and J. M. Dresser, both residents of the City of New Orleans, State of Louisiana, who declare for and in acceptance of the price and sum of Five hundred dollars cash in hand paid receipt of which is herein acknowledged and due acquittance granted, they hereby sell, assign, transfer, and deliver to the Schwing Lumber and Shingle Company, Limited, herein represented by Samuel P. Schwing, President, duly authorized to act on behalf of the said Company, by virtue of a resolution of the Board of Directors of the said Company, all the cypress timber situated and contained on the following described lands situated in the Parish of Iberia.

60 N. E. $\frac{1}{4}$ of Sec. 26, in 4th Ward; Fre. Sec. 35 Tp. 11 S. R. 8 E. containing 36.50 acres.

N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Sec. 18; N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ Sec. 21; Fre. E. $\frac{1}{2}$ of S. E. $\frac{1}{2}$ Sec. 24; or lot 3 of Sec. 24; lots 1, 2, 3, 4, and 5, of Section 28, Tp. 12, S. R. 8 E. containing 246.60 acres. Lot 3 of Sec. 3, lot 5 of Sec. 13, all of Sec. 14, except lot 5, all Sec. 20, except S. W. $\frac{1}{4}$; E. $\frac{1}{2}$ of E. $\frac{1}{2}$ of Sec. 2, in tp. 12, S. R. 9 E. containing 826.70 acres.

S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Sec. 1, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, Sec. 2; W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, Sec. 3, Lot 2 S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ Sec. 4, that $\frac{1}{2}$ part of west half of S. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of Sec. 5, East of Hog Island Pass; Fre. N. E. $\frac{1}{4}$ Sec. 6, Lots, 1, 2, 3, and 4; Sec. 8, W. $\frac{1}{2}$ of

Sec. 11, W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Sec. 12 S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ Sec. 14; N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, of S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ S. 27; lot 1, Sec. 7, and lot 1 Sec. 18, lots 4, 5, 10 and 11 Sec. 4 E. of E. $\frac{1}{2}$ Sec. 10 in Tp. 12, S. R. 10 E., containing 1,413.87 acres S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Sec. 6, E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ Sec. 34; E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Sec. 1, Tp. 12, S. R. 11 E. $\frac{3}{4}$, containing 200.31 acres.

N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Sec. 6, Tp. 12, S. R. 11, E. containing 8 acres, E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Sec. 3, N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Sec. 1, Tp. 13, S. R. 11 E. containing 200 acres.

Tract of Rosa Johnson, bounded N. by Road, south, Dugas, East Louvierre; and west, Mitchell, containing 1 acre.

Tract of Cecile Alexander, bounded N. Bernard, S. Bonin, East Louvierre and W. Fournet, containing 25 acres.

Tract of Alexander Broussard, 20 acres, of swamp Bounded N. Broussard, W. Teeche, S. Gon-soulin, E. Blank.

Tract of B. D. Dauterive, one lot in 4th ward, 30 feet front by 100 feet back, bounded N. Pellet, S. Dauterive, E. Souathe and W. Dauterive.

Tract of Jack Arvil, 23 acres, bounded N. and E. by Breaux, S. by Judice, and W. Teeche.

Tract of Edwill Erwin, 5 acres, bounded N. by Natt; S. by Hebert E., and W. by Edwin.

61 Tract of Odile Rosa Olivier, et als., 49 acres, bounded N. Hebert, S. Levis, E. and W. Olivier.

Tract of Joseph Williams, 4-1-3 acres, in 4th. Ward, bounded N. by Natt, S. by Hebert, E. & W. Erwin.

Tract of E. A. Pharr in 4th. ward, bounded north by Hinkley S. Long, E. by School and W. by Broughton.

Total acreage, 3,003.00 acres.

Total Valuation, ———.

(being cut over lands.)

The said vendor grants the said Schwing Lumber and Shingle Company, Limited, a right to remove said cypress timber in any manner at any time they may deem proper within the space of fourteen years as provided herewith, and to use and cut any other timber.

The said vendor grants said Schwing Lumber Company, Limited fourteen years from the 1st. day of January, 1908, to remove said timber. It is understood and agreed that a certain contract made and entered into by the South Louisiana Land Company, Limited, and the said Schwing Lumber and Shingle Company, Limited, dated and signed in triplicate at the City of New Orleans, on the 20th. day of November, 1901, insofar as it affects the said above described land is no longer in force.

It is understood that this contract shall cover all the land above described and any other land owned by the said vendor in said Parish, not hereinabove specifically described.

Dated and signed this 23rd, day of November, 1907.

SOUTH LOUISIANA LAND CO., LTD.

By EDWARD WISNER,

Pres.

NORTH LOUISIANA LAND COMPANY, LIMITED.

By EDWARD WISNER,

EDWARD WISNER,

J. M. DRESSER,

SCHWING LUMBER AND SHINGLE CO., LTD.

By SAMUEL SCHWING,

President.

Attest:

C. K. SCHWING,

E. SCHWING,

J. G. EUSTIS,

Notary Public.

At a special meeting of the Board of Directors of the Schwing Lumber and Shingle Company, Limited, held on the 23rd, day of November, 1907, the following resolution was offered and unanimously adopted.

Be it resolved *by* Samuel P. Schwing, President, be authorized to buy all the cypress timber situated and contained on all the lands owned by the South Louisiana Land Company; the North Louisiana Land Company, and Wisner and Dresser, situated in the Parishes of Inverville, Iberia, St. Martin and Assumption.

E. SCHWING,

Secretary.

New Orleans, Louisiana,

November 23, 1907.

At a meeting of the Board of Directors of the South Louisiana Land Company, Limited, held at the office of the Company No. 809 Hennen Building, called by Edward Wisner a quorum being present, the following resolution was proposed by J. M. Dresser and was unanimously adopted:

Resolved: That the South Louisiana Land Company, Limited, hereby authorizes its president, Edward Wisner, to execute a conveyance to the Schwing Lumber and Shingle Company, Limited of all the cypress timber to which it is entitled in the Parish of Iberia, State of Louisiana, in the terms and conditions agreed upon.

I hereby certify that the above is a true copy of the resolution passed by the Board of Directors of the South Louisiana Land Company, Limited.

MAUD DRESSER.

Attest:

J. M. DRESSER,
EDWARD WISNER,
M. A. DRESSER.

Filed November 29th, 1907.

J. G. LE BLANC, JR.,
Deputy Clerk.

63 I hereby certify that the foregoing is a true and correct copy of the original act on file in my office and of record in Conveyance Book No. 61 at folio 437, entry No. 19898.

This 23rd day of the month of April, 1919.

J. A. GONSOLIN,
Clerk of Court, Iberia Parish, La.

64 *Plaintiff's D1, Attached and Made Part of Plaintiff's Amended Petition.*

STATE OF LOUISIANA,
Parish of Orleans:

Personally came and appeared before John G. Eustis, notary public duly commissioned and qualified in and for the City of New Orleans, Parish of Orleans, State of Louisiana, the South Louisiana Land Company, Limited, a corporation organized and existing under the laws of the State of Louisiana, herein represented by its President, Edward Wisner, duly authorized to act herein by virtue of a resolution of the Board of Directors of the said South Louisiana Land Company Limited, which resolution is hereto attached. The North Louisiana Land Company Limited, a corporation organized and existing under the laws of the State of Louisiana, represented herein by Edward Wisner, President, duly authorized to act herein by virtue of a resolution of the Board of Directors of the North Louisiana Land Company Limited, and the copartnership of Wisner and Dresser, herein represented by Edward Wisner and J. M. Dresser, both residents of the City of New Orleans, State of Louisiana, who declare for and in acceptance of the price and sum of Two thousand dollars cash, in hand paid, the receipt of which is here acknowledged, they hereby sell, assign, transfer, and deliver, to the Schwing Lumber and Shingle Company, Limited, herein represented by Samuel P. Schwing, President, duly authorized to act on behalf of the said Company, by virtue of a resolution of the Board of Directors of the said Company, all the cypress timber situated and contained on the following described lands, situated in the Parish of Saint Martin, State of Louisiana.

Lot 1 and Frac. E. $\frac{1}{2}$ of lot 2, of Section 84, T. 8, S. R. 8 E., S. $\frac{1}{2}$ of Sec. 13, and unsurveyed portions of Secs. 1, 11 and 13.

T. 9 S., R. 7 East.

65 Lots, 16, 17, 18, 19, 22, 23, 25, 26 and 28, S. $\frac{1}{2}$ of Sec. 21, W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Section 22, N. $\frac{1}{2}$ of Section 28.

T. 9 S., R. 8 E.

Lot 3 of Section 32, and lots 13 of Section 33.

T. 9 S., R. 9 E.

W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Section 1, S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Section 32.

T. 10 S., R. 8 E.

Frac. Sec. 1, lots, 1, 2, and 5, of Section 4, N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Sec. 7, N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Section 7, lots 2, 3, and 4 of Section 4, E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Section 26, Sections 37 and 38, Sections 10, S. W. $\frac{1}{4}$ Island and S. E. $\frac{1}{4}$ being lot 12 of Sec. 5.

T. 10 S., R. 9 E.

Lot 10 of section 18, W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, and lots 1, 2, 3, and 4, and 5, of Section 19, Lots 1 and 2 of Section 29, all Frac. Sec. 30, N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of Section 31 Lots 1, 2, 3, 4, 5, and 6, of Section 31, All Sections 122 and 136 inclusive.

T. 10 S., R. 10 E.

Lots 1 and 2 of S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ and Frac. S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 10, Frac. S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and lots 3, 6, 7, and 8 of Sections 11 12, lot 3, of Section 35, lots 2 and 3 of Sec. 15.

T. 11 S., R. 8 E.

N. E. $\frac{1}{4}$ of Section 3, lot 3 of Section 4, lots 1, 5, and 8 of Section 5, Frac. N. E. $\frac{1}{4}$ of Sec. 12.

T. 11 S., R. 9 E.

Lots 1, 3, 4, and 9 of Section 5, Frac. N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 28, lots 4 and 5 of Section 33.

T. 11 S., R. 10 E.

Frac. N. W. $\frac{1}{4}$ of Section 10, North and west of Bayou, T. 11, S. R. 11 E., S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Section 2, S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of

Sec. 14, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ Section 23, lot 8 of Section 36, lots of Section- 3, 4, 5, and 6, E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$.

T. 8 S., R. 7 E.

Lots of section- 27 and 28, lots 1 and 2 of Section 62, lots 1, 3, 4, 5, 6, 7, and 8 of Section 63, all sec. 65 lots 1 and 2 of Sec. 76
66 Fre. Secs. 71, 72, 73, 74, 64, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of Sec. 74; all section 75, Fre. S. W. $\frac{1}{4}$ of Sec. 76, Fre. Sec. 79 West of Bayou Alabama, S. $\frac{1}{2}$ Section W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Section 80; all of Section 81, N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and lots 3 and 4 of Section 84, lot 3 of section 82, all section 83 Fre. N. W. $\frac{1}{4}$ and lot 4 of Section 85, lots or sections 3 to 17 inclusive

T. 8 S., R. 8 E.

N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Section 12, E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Section 1,

T. 9 S., R. 6 E.

Lot 1 of Section 11, 1-3 of lot 6 of section 11, N. E. $\frac{1}{2}$ of Section 24, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Section 7, S. W. $\frac{1}{4}$ of Section 28

T. 9 S., R. 7 E.

Fre. Sec. 7, W. $\frac{1}{2}$ of Section 18, E. $\frac{1}{2}$ of N. E. $\frac{1}{2}$ and S. E. $\frac{1}{4}$ of Sec. 20; E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Section 22, N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 27, undivided half interest in N. $\frac{1}{2}$ of Section 29, N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Section 36, lot 24, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 33, lots 20 and 21.

T. 9 S., R. 8 E.

Lot 1 of Section 20, lots 2, 3, 5, 6, 7, 8, 9, 10, 11, and 12, of Section 28; lots 7 and 8 of Section 27, lots 2, 3, 7, Section 33, Lots 3, 4, 5, 6, 7, 8, 9, and 10 of Section 24, lot 4 of Section 32.

T. 9 S., R. 9 E.

S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 17, N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 18, lot 1 of Sec. 35, N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 33, N. W. $\frac{1}{4}$ of Sec. 2, lot 8, of Sec. 36, $\frac{1}{2}$ interest in S. W. $\frac{1}{4}$ of Sec. 27.

T. 10 S., R. 8 E.

Lots 3 and 4, of Sec. 4, lots 2, 4, 8, 9, and 11 of Section 5, N. $\frac{1}{2}$ of N. $\frac{1}{2}$ and lots 1, 5, and 7 of Sec. 8, E. $\frac{1}{2}$ of Sec. 6, Lots 1, 2, and 4, N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 15, lots 7, 8, 9, and 10 of Section 24, or S. E. $\frac{1}{4}$ Section and S. W. $\frac{1}{4}$ Sec. 24, lot 6 of Sec. 39, S. $\frac{1}{2}$ of Sec. 28, N. $\frac{1}{2}$ of Sec. 33, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Sec. 25, S. E. $\frac{1}{4}$ Sec. 33, lot 5 of Sec. 35, lots 2 and 3 of Sec. 9;

N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Sec. 36, lots 6 and 7 of Sec. 36, part of N. W. $\frac{1}{4}$ of Sec. 36.

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T. 10 S., R. 9 E.

Lots 1, 2, 3, 4, 7, 8, 9, 11 of Sec. 18, Secs. 62, and 63; lots 3, 4, 7, 8, of Sec. 20; lots 4 and 5 of Sec. 29 E. $\frac{1}{2}$ of E. $\frac{1}{2}$ of Sec. 19, all Sec. 7, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 32.

T. 10 S., R. 10 E.

Lots 2 and 3 of Section 15, N. $\frac{1}{2}$ of Sec. and N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 13, N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 3, N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Sec. 11, S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 4, E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Sec. 10.

T. 11 S., R. 8 E.

Lots, 1, 2, 3, 4, 7, 8, 9, 11, of Sec. 18, Secs. 62 and 63, lots 3, 4, 7, and 8 of Sec. 20, lots 4 and 5 of Sec. 29, E. $\frac{1}{2}$ of E. $\frac{1}{2}$ Sec. 19, all sec. 7, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Sec. 13.

T. 10 S., R. 10 E.

N. $\frac{1}{2}$ of Sec. 1, N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and lots 3 and 4 of Sec. N. $\frac{1}{2}$ of Sec. 3, W. of Bayou Chene, except N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, all of sec. 4, W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 9, lot 8 of Sec. 8, N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of Sec. 10, lots, 2 and 3, of Sec. 11, S. W. $\frac{1}{4}$ of Frac. N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 11, lots 1 and 4 of Sec. 15, N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and lots 2, 5, 6, and 10 of Sec. 17, N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 18, S. W. $\frac{1}{4}$ of Sec. 20, N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 24.

T. 11 S., R. 9 E.

Lots, 1, 2, 3, 4, 5, and 6 of Sec. 18 $\frac{1}{2}$ E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 28 $\frac{1}{2}$ Frac. S. W. $\frac{1}{4}$ of Sec. 30, N. $\frac{1}{2}$ of N. W. $\frac{1}{2}$ of Sec. 6, Lot 1 Sec. 33, lots 8, 9, and 10 of Sec. 7.

T. 11 S., R. 10 E.

N. E. $\frac{1}{4}$ of Sec. 30, S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Sec. 19.

T. 11 S., R. 11 E.

N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 10, S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Sec. 13, S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ Sec. 15, N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 20, N. W. $\frac{1}{4}$, S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Lots 4, 6, and 7, and S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ Sec. 23, N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 24, lots, 4, 5, and 6, of Sec 26, W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Sec. 34, W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Sec. 35, S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 18.

T. 13 S., R. 11 E.

68 Lots 3 and 4 and N. E. $\frac{1}{4}$ of Sec. 8 and N. W. $\frac{1}{4}$ of Sec. 8, S. $\frac{1}{2}$ of S. $\frac{1}{2}$ of Sec. 7, N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Section of Section 18; E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ Sec. 19, W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 21, S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 27, lot 2 of Sec. 4, N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Section 17, undivided $\frac{1}{2}$ interest in W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Section 17.

T. 13 S., R. 12 E.

W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 2, N. W. $\frac{1}{4}$ of Sec. 10, lots, 4, and 5 of Section 22, lot 7 and W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 23, E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Section 24; W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 25, or that part of sec. 26 N. and E. of Lake except N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Section 27, lot 2 of Sec. 28, lot 5 of Section 35, N. W. $\frac{1}{4}$, S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and S. $\frac{1}{2}$ of Section 36.

T. 14 S., R. 11 E.

S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 4, E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Section 5; E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Section 9, N. W. $\frac{1}{4}$ of Sec. 10, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 12, S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 25, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of section 29; S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of section 31, N. W. $\frac{1}{4}$ Section and W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Section 32, E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Section 35, $\frac{1}{2}$ interest in N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 24.

T. 14 S., R. 12 E.

N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 29, Fr. S. $\frac{1}{2}$ of Sec. 32, Tract of 70 acres in Fractional section 20, S. E. $\frac{1}{4}$ of E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 18, Tract of 56 acres in Section 20 and 21, being Emma and Amelia Oliver tract, also August Verret tract of 96 acres in Sections 20 and 21, Stephen Oliver tract of section 17, E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of Sec. 31.

T. 14 S., R. 13 E.

Lot 5, N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and N. $\frac{1}{2}$ of Sec. 1, N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, Fr. W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Section 2 and Fr. secs. 3 and 5.

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T. 15 S., R. 11 E.

S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Sec. 5, N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 11, S. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 2; S. E.

$\frac{1}{4}$ of N. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 5. All Section 25 East of Flat Lake, T. 15, S. R. 12, E. All Sec. 5 west of Bayou Long or lot 3, lots 4, 5, and 7, S. W. $\frac{1}{4}$ of Sec. 6, lot 2 of Sec. 22.

T. 15 S., R. 13 E.

Tract of E. S. Gilson, bounded N. & W. by De Blane, S. by Dugas and west by Banker, being 80 acres in T. 10, S. R. 7 E.

Tract of Simeon Stephens, bounded north by Plumbo, south by Vernet, east by Allen, and west by Bernard.

Tract of Edwin Lafort bounded north and east by Grand River, south by Castagne, and west by Trubian, being 25 acres.

Tract of Eugene Wiltz, 41 acres, bounded north by M. McManis, east by Tourtran, south by A. Fontenette, and west by Joe. Allman.

Tract of Louis and Aug. Albert, 70 acres, bounded north by Dugas, east by Citizens bank, west by Le Blane and south by Flory.

Tract of Lucien Metolara, 5 acres, bounded north by Bonassand, south by Bayou Teebe, east by Terrell, and west by Tarleton.

Tract of Jean Baptiste Theriot, 6 acres, bounded north by Chene, west by Vernet, east by Case and south by McCandey.

Tract of Ignace Le Dugas, 40 acres, bounded north by Bonassand, south and west by Bernard and east by Dupreier.

Tract of A. J. Vernet, 77 arpents, bounded north by McCandey, south by Vernet, east by Walter and west by Bonassand. 150 arpents, bounded north by Bonassand, east by Bonassand, south by Carlin, west by Crook Chene, 12 arpents bounded north by Vernet, east by Bayou Chene, north by Grand River, and east by Tenoue.

Tract of Emile Forest, 15 acres, bounded north by Kittidge, and east by S. Hurme.

Tract of Mrs. Emile Vernet, 4 acres, bounded north by Crook Chene, east by Theriot, south by McCandey, and west by Metolara.

Tract of J. B. Metolara, 170 acres, bounded north by School Land, south and east by Plumbo, and west by Case, 80 acres bounded north by Case, south and east by Plumbo, west by Chene, 80 acres, bounded north and east by Fontaine, south by Plumbo and west by Case.

Tract of Repe, of Etanbe Louis, 12 $\frac{1}{2}$ acres, bounded north by Fontenette, east by Louis, south and west by Nourisse.

Tract of Shadell and Lucie, bounded north by Grand River, east by Martin, south by Phlegmesine, and west by Tenoue, being 300 acres.

Tract of Clement Frison, 135 acres, bounded north by Latour, south and east by Plumbo, and west by Metolara.

Tract of Ustin Holbert, 500 acres, bounded south by Holbert, east by Ribenlatix, and west by Lestrappes.

Tract of 12 acres bounded north, east, south and west by Pierre.

Tract of John Lake, 30 acres, bounded north by Latour, east, south and west by Atchafalaya River.

Tract of Repe, Philomene Theriot, 3 acres, bounded north and west by Nourisse, east by Bernard, south by Boris.

Tract of Wid. Valery Guidry, 74 acres, bounded north and east by Public Land, south by Hebert, west by Letillier, being S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ Sec. 18, T. 8, S. R. 7 E.

Tract of F. D. Broussard, 120 arpents, bounded north, by McCauley, south and east by Theriot, and west by Crook Chene.

Tract of Emile Foret, 15 arpents, bounded north by Kittridge, east and west by Bland, and south by Hurnas.

Tract of D. Roy and A. Durio, bounded north by Bush, East and west by Thibodeaux, and south by Bush.

71 Tract of B. C. Vastagne, 40 arpents, bounded north by Grand River, east by Bullrice, south by Tally, and west by Lefore.

Tract of Louis Marceisse, bounded north by Richard, south by Duplantis, east by Barras and west by Levert.

Tract of Eugene F. Sonnier, bounded north and west by Thibodeaux, south by Public Lands, east by Cormier.

Tract of J. J. Lake, bounded north and east by E. Burnard, west by Larompe, being 94 acres, also tract of 38 acres bounded north and east by Burnard, west and south by Larompe.

Tract of John Ride, 3.38 acres, bounded north by J. L. Landry, east by Leonnso, south by a road and west by Landry.

Tract of Ben Kidder, 34 acres, bounded north by Durio, east by Leonormand, south by Begnaud, and west by Thibodeaux.

Tract of Widow T. Loremand, bounded north and east by Dugas, south and west by Durio.

Tract of Dorsey Broussard, bounded north by Dugas, east by bank, and west and south by Marduez.

Tract of G. W. Allen, 250 acres, bounded W. by Broughton, N. by Broussard, and east by Chene.

Tract of Joe Journet, 9 acres, bounded north by Journet, east by Baussilier, south by Bros., and west by Darters.

Tract of Estate of Michel Tuppeaux, 20 arpents, north by Hebert, east by Dugas, and west and south by Iberin.

Tract of Arthur Hebert, 40 acres, bounded by Bejeaux, east and west by Use and south by Patin.

Tract of Henry Le Blanc in 4th ward bounded north by Breau, south and east by Oubre, and west by Dupois.

72 Tract of Lastrapes and Warren, bounded north by McCauley, east by Allen, south by Perry and west by Louis.

Tract of S. H. Shaddell, bounded north by Chene, south by Chene, east by Cross and west by Carlin.

Tract of Francis Eugene, 1 acre, bounded north by Public Road, east and west by M. Turpeau, south and east also.

Total acreage, 26,162.00.

All being cut over lands.

The said vendors grant the said Schwing Lumber and Shingle Company, Limited, the right to remove the said Cypress timber in any manner at any time they may deem proper within the space of 14 years as provided herewith, and to use and cut any other timber which may be necessary for the removal of said cypress timber.

The said vendors grant said Schwing Lumber and Shingle Company, Limited, 14 years from the 1st January, 1908, to remove the said timber.

It is understood and agreed that a certain tree contract made and entered into by the South Louisiana Land Co. Ltd., and the said Schwing Lumber and Shingle Co. Ltd., dated and signed in triplicate at the City of New Orleans, on the 20th day of January, 1901.

In so far as *as* it effects the said above described land is no longer in force.

It is understood that this contract shall cover all the lands above described and any other land owned by the said vendors in said Parish not hereinabove specifically described.

Dated the 23rd day of November, 1907.

SOUTH LA. LAND CO., LTD.,
By EDWARD MARTIN,

President.

NORTH LOUISIANA LAND
CO., LTD.,

By EDWARD WISNER,

President.

EDWARD WISNER,

J. M. DRESSER,

SCHWING LUMBER &

SHINGLE CO., LTD.,

By SAMUEL P. SCHWING,

Pres.

Attest:

C. K. SCHWING,

E. B. WEISNER,

J. G. EUSTIS,

Notary Public.

At a special meeting of the Board of Directors of the Schwing Lumber and Shingle Co., Ltd., held on the 23rd day of November, 1907, the following resolution was offered and unanimously adopted:

Be it resolved that Samuel P. Schwing be authorized to buy all of the cypress timber situated and *containing* on all of the lands owned by the South Louisiana Land Company, Ltd., the North Louisiana Land Co., Ltd., and Wisner and Dresser, situated in the Parishes of Iberia, Iberville, St. Martin and Assumption.

E. B. SCHWING,

Secretary.

New Orleans, Nov. 23, 1907.

At a meeting of the Board of Directors of the South Louisiana Land Company, Limited, held at the office of the Company, No.

809 Hennen Building, called by Edward Wisner, a quorum being present, the following resolution was proposed by J. M. Dresser and was unanimously adopted:

Resolved that the South Louisiana Land Company, Limited, hereby authorizes its president, Edward Wisner, to execute the conveyance to the Schwing Lumber and Shingle Company, Limited, of the cypress timber to which it is entitled in the Parish of St. Martin, Louisiana, on the terms and conditions agreed upon.

I hereby certify that the above is a true copy of the resolution passed by the Board of Directors of the South Louisiana Land Co., Ltd.

MAUDE DRESSER,
Secretary.

Attest:

J. M. DRESSER,
EDWARD WISNER,
M. A. DRESSER.

74 STATE OF LOUISIANA,
Parish of St. Martin:

I, Ignace Bienvenue, Deputy Clerk of Court and Ex-Officio Deputy Recorder in and for the Parish of Saint Martin, La., do hereby certify that the above and foregoing is a true and correct copy of record in Conveyance Book No. 68 at folio 161 under No. 33192 Recorded November 29th, 1907.

In faith whereof, witness my hand and seal of office at St. Martinsville, Louisiana, this 24th day of April, 1919.

IGNACE BIENVENUE,
Deputy Clerk of Court.

75 *Petition of Intervention of the Schwing Lumber & Shingle Company, Limited.*

Filed July 19th, 1919.

PARISH OF IBERIA,
State of Louisiana:

19th Jud. Dist. Court.

ATCHAFALAYA LAND CO., LTD. (in Liq.),

vs.

F. B. WILLIAMS CYPRESS CO., LTD., et als.

To the Honorable the Judge of the 19th Judicial District Court in and for the Parish of Iberia:

This the petition of intervention of the Schwing Lumber and Shingle Company, Limited, a corporation duly chartered according

to the laws of the State of Louisiana, and domiciled in the Parish of Iberville, with leave of Court first had and obtained, files this intervention and sets forth:

1.

That it joins the plaintiff in all the allegations of the petition, adopting them serially as made.

2.

That it has purchased from the Atchafalaya Land Company all of the rights which the said Company had or might have to all of the cypress situated upon the lands belonging to that Company, and which said Company acquired through mesne conveyances of Wisner and Dresser, under the conditions and circumstances set forth in plaintiff's petition.

3.

That it purchased all of said cypress timber, inclusive of all of the rights which the Atchafalaya Land Company, Limited, might have to any cypress timber for the reason that it owns and operates in the town of Plaquemine, Parish of Iberville, a saw mill and lumber manufacturing plant, and the said timber and rights to timber were purchased exclusively for the purpose of subserving the needs of the said saw mill, and lumber manufacturing business.

—

That it has very recently, and within a period much less than one year, ascertained that the F. B. Williams Cypress Company, Limited, through its officers and agents, and acting in concert with and through and for F. B. Williams, who in truth and in fact owns and controls over ninety per cent of the stock of said Company, has entered upon the lands set forth in plaintiff's petition without right or title, and has cut and removed cypress timber from a portion of said lands, as intervenor has been advised, and being so advised declares: that the operation of said F. B. Williams Cypress Company, Limited, and of the said F. B. Williams are in details unknown as yet to the said Intervenor, nor is it possible for the intervenor at this time to make the specific declaration as to the amount of timber so removed, and that besides the timber so removed, the said Williams has prepared to remove other timber which he has deadened and prepared for the market, and that the only manner in which Intervenor can ascertain the extent of the depredations upon said lands as to the timber previously cut, as well as that being prepared for the market, is by the appointment of timber experts under order of this Honorable Court, charged with the duty of investigating said lands and determining the quantity and quality of timber heretofore removed, and that being prepared for the market; and that the judg-

ment of this Court against the said F. B. Williams Cypress Company, and F. B. Williams should be for the manufactured price of the lumber for the reason that the timber referred to has been taken from the Intervenor, who is likewise engaged in the saw mill business, and has destined all of its timber inclusive of that on the lands set out in plaintiff's petition, for manufacture at its mill, and that the said manufactured price of lumber is not less than \$—, but in the
 77 alternative, that the judgment should be for no less than the stumpage value of the timber on the basis of Ten dollars per thousand.

5.

That under the conditions set forth in the plaintiff's petition, although patent has not issued unto the Board of Commissioners of the Atchafalaya Basin Levee District, nor from said Board unto the assignee of Wisner and Dresser that the said land is withdrawn from sale or other disposition by and through the State of Louisiana, the equitable title thereto being held by the said State of Louisiana for the benefit of the Board of Commissioners of the Atchafalaya Basin Levee District and its assignees, who in the instant case are the Atchafalaya Land Company, Limited, in Liquidation, and to the extent of the cypress timber on said land, the present intervenor, and that any depletion, destruction or injury to the said property, thereby decreasing the interest of intervenor therein, is an injury susceptible to a reparation to the full extent thereof, and that the said defendants should be jointly held liable in the premises.

6.

Intervenor sets forth that it is advised and being so advised, believes and avers that the said F. B. Williams Cypress Company, Limited, and the said F. B. Williams, acting through said Company, have established works for the purpose of removing timber still standing upon the lands described in plaintiff's petition, and are in the process of consummating such purposes at this time; and that pending the decision of the rights of the respective parties, such remedy should be applied by the Court in its jurisdiction as may subserve the end of justice and protect the rights of all parties in interest.

Wherefore, Intervenor prays to be allowed to file this intervention and further, that the said F. B. Williams Cypress Company, Limited, through its proper officers, and F. B. Williams personally, be
 78 duly cited to answer the demands of this petition and intervention; and that after due hearing of the case there be judgment as prayed for in the plaintiff's petition, together with the recognition of the rights of Intervenor to the cypress timber on the said land now standing, and further, that there be judgment against the said F. B. Williams Cypress Company, Limited, and against F. B. Williams in solido, in an amount based upon the manufactured price of lumber in the manner set forth above, or in the alternative, on the

basis of ten dollars per thousand feet in stumpage, and further, that for the purpose of ascertaining the extent of the timber cut and that prepared for removal this Court appoint two timber experts charged with the duty of making said investigation and reporting to this Honorable Court; and for costs and general relief.

BURKE & SMITH,
F. E. DELAHOUSAYE,

Attorneys.

Before me, the undersigned authority, personally came and appeared Walter J. Burke, who, being duly sworn, says: That he is of counsel for Intervenor, that the facts and allegations as set forth in the foregoing petition and intervention are true and correct to the best of his knowledge and belief, so help him God.

WALTER J. BURKE.

Sworn to and subscribed before me this 10th day of July, 1919.

F. G. DECUIR,

Deputy Clerk.

Order.

Let the intervention be filed and service made as prayed for.
Granted officially this 19th day of July, 1919.

JAMES SIMON,

Judge.

Filed July 19, 1919.

F. G. DECUIR,

By Clerk.

79 *Amended Petition of Intervenor Schwing Lumber & Shingle Company, Limited.*

Filed July 26th, 1919.

PARISH OF IBERIA,

State of Louisiana:

19th Judicial Dist. Court.

ATCHAFALAYA LAND CO., LTD., in Liq.,

VS.

F. B. WILLIAMS CYPRESS CO., LTD.

To the Honorable the Judge of the 19th Judicial District Court in and for the Parish of Iberia:

Now with leave of Court first had to amend the original petition herein, Intervenor, the Schwing Lumber & Shingle Company, Limited, avers that amending paragraph two of the petition, it supplements the allegations thereof to the following extent, to wit:

That while it alleged in paragraph two that it has purchased from the Atchafalaya Land Company all of the rights which said company had or might have to all of the cypress situated on the land belonging to said company, it did so, under the knowledge that the Atchafalaya Land Company stands for and represents the Wisner and Dresser interests, but in order to have all of the facts before the Court concerning its title, it avers that as is set forth in the deed marked Plaintiff Exhibit D" in the admitted statement of fact, and in Exhibit D-1, also in the admitted statement of fact, both passed before J. G. Eustis, notary public, bearing date the 23rd day of November, 1907, Intervenor acquired from the South Louisiana Land Company, the North Louisiana Land Company and from Edward Wisner and J. M. Dresser, the said companies then representing the Wisner and Dresser interests, the timber rights to all of the lands owned by said parties in the parishes of Iberia and Saint

80 Martin, as is shown by said deeds; and that subsequent thereto the South Louisiana Land Company, through Edward

Wisner, selling all of its rights in the lands situated in the various parishes indicated by the deeds marked in the admitted statement of facts, "Plaintiff's Exhibits C and C-1," to the Atchafalaya Land Company, represented by J. M. Dresser, took special notice of the rights of the Schwing Lumber & Shingle Company to all of the timber as having been acquired from the South Louisiana Land Company. The said acquisition from the South Louisiana Land Company being also from J. M. Dresser and Edward Wisner, the original grantees, the intervenor declaring that all parties participated in the sale of the timber rights to it.

Wherefore, intervenor prays for leave to file this amended and supplemental petition; that a copy of the same with citation be served upon the defendant according to law, and further the intervenor prays as in the original petition.

And for general relief.

BURKE & SMITH,
F. E. DELAHOUSSEY,

Attorneys.

Before me, the undersigned authority, comes Walter J. Burke, who being sworn, says that he is of counsel for Intervenor; that the facts and allegations set forth in the foregoing petition are true and correct, so help him God.

WALTER J. BURKE,

Sworn to and subscribed before me this 26th day of June, 1919

VENTRESS J. SMITH,

Notary Public.

Order.

Let the foregoing supplemental and amended petition be filed as prayed for. Granted officially this 26th day of July, 1919.

JAMES SIMON,

Judge.

81 *Answer of the Defendants, F. B. Williams and The F. B. Williams Cypress Co., Ltd., to Plaintiff's Petition.*

Filed July 26th, 1919.

PARISH OF IBERIA,
State of Louisiana:

19th Jud. Dist. Court.

ATCHAFALAYA LAND CO., LTD. (in Liq.),

VERSUS

F. B. WILLIAMS CYPRESS CO., LTD., et als.

Answer,

Now come F. B. Williams and F. B. Williams Cypress Company, Limited, made defendants herein, and reserving fully the benefit of the exception of no cause of action and the plea of prescription heretofore filed, and in no manner waiving the same, but, on the contrary, insisting thereon and protesting against the over-ruling thereof, deny all and singular, generally and specially, the allegations of the original and amended petitions herein save such as may be hereinafter specially admitted.

And now, further answering, defendants says:

1

Defendants admit the allegations of this paragraph.

2

Defendants admit the allegations of this paragraph.

3.

Defendants admit the passage of Act 97 of 1890, and aver that the effect and correct interpretation of said act is matter of law.

4.

Defendants are without knowledge of the facts alleged in this paragraph except as the same appear from the copy of the original contract between the Board of Commissioners of the Atchafalaya Basin Levee District and Wisner and Dresser, dated July 9th, 1900, annexed to the amended petition as "Exhibit A."

82 Insofar as the said allegations may appear from said contract defendants admit the same, and otherwise defendant deny them for lack of sufficient information.

5.

Defendants deny, for lack of sufficient information, the allegations of Article 5 as amended save the allegations as to the execution of the instrument dated April 11th, 1904, marked "Plaintiff B," which instrument has no bearing upon any of the land involved in this suit nor any reference to or recognition of any title in the present plaintiff.

6.

Defendants deny, for lack of sufficient information the allegations of Paragraph 6.

7.

Defendants admit the execution of the deed by the South Louisiana Land Company, to the Atchafalaya Land Company, Limited, on December 30th, 1908, by act before J. G. Eustis, notary public.

Defendants deny the execution of any deed by the Board of Commissioners of the Atchafalaya Basin Levee District to the Atchafalaya Land Co. Ltd., or to the South Louisiana Land Company, or to Wisner & Dresser of the lands involved in this suit.

Defendants aver that all of the remaining allegations of the amended petition are conclusions of law, which defendants deny.

8.

The allegations of this paragraph are conclusions of law which are at issue in this case, and which defendants deny.

Defendants aver that, if the opinion of the Attorney General of the State is relevant matter for pleadings in this cause, and is to be considered as controlling the Courts, then the last opinion of the

Attorney General of the State of which these defendants are
83 advised is the opinion expressed by him in the briefs filed in

Cause No. 23,218 on the docket of the Supreme Court of the State of Louisiana, entitled "State of Louisiana, ex rel. vs. Board of Commissioners of the Atchafalaya Basin Levee District vs. Paul Capdeville, Auditor, and Fred J. Grace, Register State Land Office (Atchafalaya Land Co., and others Interveners) in which the Attorney General maintains the position and the opinion that Section 11 of Act 97 of 1890, purporting to grant lands of the State to the Atchafalaya Basin Levee District (upon which Section and Act the present claims of the present plaintiff are entirely based) is unconstitutional, null and void as in contravention of Art. 58 of the Constitution of 1898 (and Article 56 of the Constitution of 1879). And defendants aver that upon this opinion of the Attorney General the claims of the present plaintiff must be denied and rejected.

9.

Defendants deny the conclusions of law set out in this paragraph and the amendment thereof, and aver the fact to be that, in pursuance of applications made previous to issuance of the patents, the Governor of the State of Louisiana, and the Register of the State Land Office, did issue to defendants, Pharr & Williams, (a partnership composed of the present defendant, Frank B. Williams and the late John N. Pharr) patents covering the lands involved in this suit, which patents were dated September 4th, 6th, and November 19th, 1890, duly certified copies thereof having been heretofore filed in these proceedings.

Defendants aver that the said patents were issued, as aforesaid, in pursuance of applications previously filed, and upon the payment to the State of the cash consideration of seventy-five cents, (.75c) per acre, being the consideration provided by law.

That said patents were issued under the seal of the of the State of Louisiana, and the signatures of the Register of the State Land Office and the Governor of the State, and in accordance with the constitution and laws of the State.

The allegations of the amended petition as to paragraph 9 are all of them conclusions of law, which defendants deny.

10.

Defendants aver that the interest of the said Pharr in the said lands was subsequently conveyed by him to Frank B. Williams, and the said lands were thereafter transferred by the said Williams to the F. B. Williams Cypress Co., Ltd.

Defendants admit that F. B. Williams originally owned ninety per cent. (90%) of the stock of F. B. Williams Cypress Co., Ltd.

11.

The allegations of this paragraph are *are* conclusions of law, which are denied.

12.

Defendants admit the recordation of the original patents in the Parishes of Iberia and St. Martin, and defendants aver that the said patents have been of record in the Clerk's Office of said Parishes, as well as in the record of patents in the State Land Office at Baton Rouge, for now almost thirty years.

Defendants deny the remaining allegations of this paragraph, which are conclusions of law.

13.

The allegations of this Paragraph are conclusions of law, which are denied.

14.

Defendants admit that they are engaged in the cutting and moving of timber from the lands described in the petition, and were so engaged at the time of the filing of this suit, and prior thereto, all in the regular, public, open and notorious conduct of defendants' business, and in the regular, notorious and open exercise of defendants' rights of ownership over and upon said lands. And defendants deny all of the other allegations of this paragraph.

15.

Defendants deny the conclusions of law stated in this paragraph and particularly deny that this is a proper case for judicial sequestration, defendants insisting that they are entitled to the security provided by law to protect defendants from the damages resulting from the attempt of the present plaintiff, a private corporation, the assertion of unfounded claims, to interfere with these defendants in their beneficial ownership and enjoyment of said land. And defendants reserve fully their rights to recover damages from the plaintiff in this proceeding for an unwarranted interference with these defendants.

16.

The allegations of this paragraph are conclusions of law, which defendants deny.

17.

Now, further answering, defendants again aver that the patents issued to Pharr & Williams under which these defendants claim were issued, as heretofore set forth in the year 1890, now almost thirty years ago.

That said patents were issued in pursuance of applications previously made upon a cash consideration of seventy-five cents, (75¢) per acre, the consideration provided by law, which sum Pharr & Williams, the authors in title of these defendants, paid to the State of Louisiana in good faith and in consideration of said patents and in reliance thereon.

That said patents were issued by the State of Louisiana, designed by the Governor of the State and Register of the State Land Office, and of record in the *in the* State Land Office, for nearly almost thirty years; and defendants again aver that they are protected by the express provisions of Act 62 of 1912, and defendants specially plead the prescription of six years established by said Act as a bar to any attack upon said title.

Further answering, defendants say that immediately after the issuance of the patents to said lands they went into possession thereof and exercised acts of ownership thereon, causing the timber to

cruiised, estimated and marked, canals to be dug, timber to be actually cut and removed from said lands, and other open and notorious acts of possession to be exercised—all of which have been continuously exercised from the granting of said patents up to the present time.

Defendants moreover aver that they have paid taxes to the State of Louisiana upon said lands continuously since the patenting thereof.

Defendants plead specially the prescription of ten years, and defendants specially plead that the plaintiff, whose alleged claims date back to 1900, now almost twenty years ago, who have stood by and permitted the payment of taxes by these defendants and the undisputed exercise of acts of possession thereon, are estopped from now attempting to assert claims to said lands to which they have never obtained any deed or title even at this time, and in the possession and ownership of which defendants are entitled to be protected under the patents from the State of Louisiana issued to these defendants in 1890.

Wherefore, with full reservation of the rights of defendants to claim hereafter such sums as may be due these defendants for any interference with or damage to the property involved in this suit or defendants' work thereon, defendants pray that their exception and pleas be maintained, and that the demands of the plaintiff be rejected at its cost.

87 And for all general and equitable relief.

HALL, MONROE & LEMANN,
BORAH, HIMEL, BLOCH & BORAH,
Attorneys for Defendants.

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared C. S. Williams, to me known, who, being by me first duly sworn, deposes and says:

That he is vice-president of the F. B. Williams Cypress Company, Ltd., that the president of said Company is absent from the State of Louisiana, that he has read the above and foregoing answer, and that all the facts and allegations therein contained are true and correct.

C. S. WILLIAMS.

Sworn to and subscribed before me this 24th day of July, 1919.

FRED. C. MARX,
Notary Public.

Filed July 26th, 1919.

F. G. DECUIR,
Dty. Clk.

88 *Answer of F. B. Williams and F. B. Williams Cypress Company, Limited, to Petition of Intervenor, Atchafalaya Basin Levee District.*

Filed July 26th, 1919.

PARISH OF IBERIA,
State of Louisiana:

19th Judicial Dist. Court.

No. —.

ATCHAFALAYA LAND CO., LTD. (in Liquidation);

versus

F. B. WILLIAMS-CYPRESS CO., LIMITED, et als.

Now again come F. B. Williams and F. B. Williams Cypress Company, Limited, upon whom has been served an appearance or better pleading with unnumbered paragraphs filed by the Board of Commissioners of the Atchafalaya Basin Levee District, and, to the extent if any, that said pleading purports to assert any relief or claims against F. B. Williams and F. B. Williams Cypress Company, Limited, the except that the same discloses no cause and no right of action, and without in any manner waiving this exception, but, on the contrary insisting thereon and protesting against the overruling thereof, deny all and singular general and special, the allegations in said pleading contained.

With reservation of the exception of no cause of action, your attorneys further plead as a complete bar to any demand that the said pleading may be said to make against F. B. Williams and the F. B. Williams Cypress Co., Ltd., or any claims it has or ever had to claim the lands in contest or to annul the patents issued to the author & title of appellants the prescription of six years established by Act of 1912.

89 They further plead as a bar to any claim on the part of the said Board of Commissioners of the Atchafalaya Basin Levee District, to the lands in contest the prescription of ten years under the Civil Code of the State of Louisiana. All of which plea are specially set up by appellants herein in their answer to the Atchafalaya Land Company, Limited, in Liquidation, and which pleas, together with all other defenses set up in their said answer, are reiterated herein and made a part of the answer to the Board of Commissioners of the Atchafalaya Basin Levee District, to the extent, if any, that said Board is asserting any claims against appellants.

Further answering, appears as follows:

1.

That they admit that the lands were granted to the State of Louisiana under swamp land grants as alleged by the Board of Commissioners of the Wetlands Basin Lease District in what would be paragraph 2 of its pleading, if amended, but they deny all other allegations in said paragraph, and aver that patents were legally issued to Platt and Williams, and Frank B. Williams, a partnership composed of Frank B. Williams and John S. Platt.

They deny that said patents were null and void.

2.

In answer to what would, if amended, be Paragraph 3 respondents adhere to their answer to Paragraph 10 of the petition of the plaintiff in above cause.

3.

In answer to that would, if amended, be paragraph 4 respondents aver that the allegations therein are mere conclusions of law, which, together with any allegations of fact that may be contained therein, are hereby specifically denied.

or

4.

They deny that description of the patents should be inserted as alleged in what would be paragraph 5, and adopt as a further answer to said Paragraph, the answer to Paragraph 12 of the petition of plaintiff.

5.

Respondents adopt as an answer to what would be Paragraph 6, if amended, the answer of respondents to Paragraph 13 of the petition of plaintiff.

6.

What would be Paragraph 7, if amended, being a conclusion of law as to the obligations of the Board of Commissioners of the Wetlands Basin Lease District, same is denied, and respondents specifically deny the right of the said Board to grant, as is here attempted, an assignment to the plaintiff company of the alleged rights of Waters and Hoover with said Board to the proceeds of respondents, who hold title to said property by deed duly and lawfully recorded, extending over a period of nearly thirty years.

Wherefore, respondents pray as in their answer to the petition of the plaintiff herein.

They further pray that the exceptions and pleas of prescription herein pleaded be sustained, and that plaintiff's action, together with the intervention of the Board of Commissioners of the Atchafalaya Basin, Lower District, be dismissed, denied and rejected at their cost.

For costs and general relief.

HALL, MONROE & LEMANN,
BOARD, HIMEL, BLOCH & BOARH,

Attorneys for Respondents,

91 STATE OF LOUISIANA,
Parish of Orleans;

Before me, the undersigned authority, personally came and appeared C. S. Williams, to me known, who, being by me first duly sworn, deposes and says:

That he is the vice president of the F. B. Williams Cypress Co. Ltd., that the president of the said Company is absent from the State, that he has read the above and foregoing answer, and that all the facts and allegations therein contained are true and correct.

C. S. WILLIAMS,

Sworn to and subscribed before me this 24th day of July, 1919.

FRED. C. MARX,

Notary Public.

Filed July 26th, 1919.

F. G. DECUIR,

Dty Ck.

92 *Answer of Defendants F. B. Williams and F. B. Williams Cypress Company, Limited, to Petition of Intervention of the Schwing Lumber & Shingle Company, Limited.*

Filed July 26th, 1919.

PARISH OF IBERIA,
State of Louisiana;

19th Jud. Dist. Court,

No. —,

ATCHAFALAYA LAND CO., LTD. (in Liq.),

VERSUS

F. B. WILLIAMS CYPRESS CO., LTD., et als.

Answer to Intervention of Schwing Lumber & Shingle Company, Limited.

Now come F. B. Williams and F. B. Williams Cypress Company, Limited, and except to the petition of intervention filed herein by the

Schwing Lumber & Shingle Company, Limited on the ground that the same discloses no cause and no right of action.

And without in any manner waiving said exception, but, on the contrary, insisting thereon, defendants plead in bar of the demand of said Schwing Lumber & Shingle Company, Limited, the prescription of six years established by Act 62 of 1912, and the prescription of one and ten years under the Civil Code of Louisiana.

And now, without in any manner waiving any of said pleas, but insisting thereon, defendants deny all and singular, generally and specially, the allegations of the petition of Intervenor herein save such as may be hereinafter specifically admitted.

Further answering, defendants say:

1.

This paragraph requires no answer.

2.

Defendants deny the allegations of this paragraph for lack of sufficient information.

93

3.

Defendants admit that the intervenor owns a saw mill in the Town of Plaquemine, La., but defendants deny that intervenor ever purchased any timber upon the lands described in the petition herein, and defendants aver that intervenor never had any idea that it was in any manner entitled to any timber on said lands, the facts being, as defendants are informed and believe, that intervenor well knew that said timber was claimed by and belonged to your defendants under patents issued by the State of Louisiana, now almost thirty years ago, and intervenor never asserted any sort of claim to any timber upon said lands now ever had in mind purchasing the same.

4.

Defendants deny, upon information and belief that this intervenor only recently learned that the F. B. Williams Cypress Company, Limited, and F. B. Williams had entered upon the lands described in the petition and had cut and removed cypress timber therefrom.

Defendants aver, as set out in the answer to the original petition, that defendants' operations upon said lands have been open, public and notorious for almost thirty years.

Defendants deny that intervenor is entitled to recover any sum whatever of these defendants.

Defendants deny all of the remaining allegations of this paragraph.

5.

Defendants admit that no patent has issued to the Board of Commissioners of the Atchafalaya Basin Levee District, and no deed from said Board to the assignees, (if any) of Wisner and Dresser.

The remaining allegations of this paragraph are argumentative conclusions of law, which defendants deny.

94

6.

Defendants admit the establishment of works by them long prior to the institution of this suit, and continued by them openly, publicly and notoriously for almost thirty years.

Defendants deny that intervenor has any right to any remedy against these defendants whatsoever.

Further answering defendants aver that they have paid taxes upon the timber upon these lands for almost thirty years; that they have been in open and notorious possession thereof under duly recorded patents, to the knowledge of the intervenor, for said period of time, and defendants specially plead that said intervenor, having knowledge of the acts and possession and the expenditures by defendants in digging canals and other works upon said lands, and never having asserted any form of claim thereto, is estopped from in any manner disputing defendants' rights to said timber.

Wherefore, defendants pray that these exceptions and pleas be maintained, and that intervenor's petition be dismissed and rejected at its cost. And for all general and equitable relief.

HALL, MONROE & LEMANN,
BORAH, HIMEL, BLOCH & BORAH,

Attorneys for Defendants

STATE OF LOUISIANA,

Parish of Orleans:

Before me, the undersigned authority, personally came and appeared, C. S. Williams, to me known, who, being by me first duly sworn, deposes and says: That he is vice-president of the F. B. Williams Cypress Company, Ltd., that the president of said Company is absent from the State of Louisiana, that he has read the above and foregoing answer, and that all the facts and allegations therein contained are true and correct.

95

C. S. WILLIAMS.

Sworn to and subscribed before me this 24th day of July, 1919.

FRED. C. MARX,

Notary Public

Filed July 26th, 1919.

F. G. DECUIR,

By Ctk.

- 96 *Acceptance of Service of Amended Petition of the Schwing Lumber & Shingle Company, Limited, by Defendants and Adoption as Answer to Same Answer to Original Petition of Intervention of Schwing Lumber & Shingle Company.*

Filed July 28, 1919.

PARISH OF IBERIA,

State of Louisiana;

19th Judicial Dist. Court.

ATCHAFALAYA LAND CO., LTD. (in Liq.),

VS.

F. B. WILLIAMS CYPRESS CO., LTD., et als.

Service of the amended petition of the Schwing Lumber & Shingle Company, Limited, in the above matter is acknowledged and accepted, and we hereby adopt as answer to said amended petition the answer to the original petition of intervention filed in said cause by said Schwing Lumber & Shingle Co. Ltd., the said original answer to be considered as applying to this amended intervention.

New Orleans, Louisiana, July 30, 1919.

HALL, MONROE AND LEMANN,
BORAH, HIMEL, BLOCH & BORAH,

Attorneys for Defendants.

Filed July 28, 1919.

F. G. DECUIR,

Dty Ck.

- 97 Plaintiff's documentary offerings, marked P-A, B, B1, C, C1, D, D1, are attached and made part of plaintiff's amended petition. For said offerings refer to pages 32 to 74 of within transcript.

- 98 *Copy of Receipt, State of Louisiana to Pharr & Williams, Dated September 6th, 1890, Introduced in Evidence July 28th, 1919.*

Marked Plaintiff "E."

Register of State Land Office,

Sealed

State of Louisiana,

Baton Rouge,

Fred J. Grace, Register.

I, Fred J. Grace, Register of the State Land Office, hereby certify that the hereto attached sheet is a true and correct copy of Treasurer's

receipt No. 2166 now on file in the State Land Office. And I further certify that the sheets numbered on the sheet bear the dates set opposite each number.

Given under my hand and official seal on this 18th day of July, 1919.

[SEAL.]

FRED J. GRACE,

Register of the State Land Office.

State of Louisiana,

Treasurer's Office,

Baton Rouge, Sept. 6, 1890

Auditor's Order No. 3375,

Register's No. 2166.

Received from Pharr & Williams the sum of Three hundred & 38 100 dollars, being in full for the purchase of W. $\frac{1}{2}$ Section 27, E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, Section 30, T. 12 S., R. 11, E. S. W. Dist., containing 400.50 acres @ 75c per acre.

Ph. Iberia. Sales of swamp lands.

[SEAL.] (Signed)

W. H. PIPES,

Treasurer State of Louisiana

99 \$300.38/100.

Receipt No. 2161 is dated September 4th, 1890.

Receipt No. 2172 is dated September 6th, 1890.

Receipt No. 2261 is dated November 19th, 1890.

Receipt No. 2263 is dated November 19, 1890.

Receipt No. 2262 is dated November 19th, 1890.

Receipt No. 2171 is dated September 6th, 1890.

Receipt No. 2173 is dated September 6th, 1890.

Receipt No. 2168 is dated September 6th, 1890.

Receipt No. 2167 is dated September 6th, 1890.

Receipt No. 2169 is dated September 6th, 1890.

Receipt No. 2170 is dated September 6th, 1890.

100 *Patent, State of Louisiana to Pharr & Williams, Dated September 4th, 1890, Introduced in Evidence July 28, 1919, Marked Defendant 1.*

Filed July 28, 1919.

Patent No. 2021, N. S. L.

To all to whom these presents shall come, Greeting:

Whereas, Pharr and Williams of the Parish of St. Mary in the State of Louisiana, purchased per certificate No. 2161, N. S. L., September 4, 1890, southeast quarter of northeast quarter, northeast quarter of southeast quarter, southwest quarter, northeast quarter, southeast quarter of northwest quarter, northeast quarter of south-

west quarter of Section No. 4, in Township 13, South Range 11 East in the Southwestern Land District, containing 240-24/100 acres, according to the official plat of the survey of said lands in the State Land Office.

Now, know ye, that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold and by these presents does give, grant, and sell unto the said Pharr and Williams and to their heirs the above described land, to have and to hold the same, together with all the rights, titles and privileges thereunto belonging, unto the said Pharr and Williams and to their heirs and assigns forever.

In testimony whereof, Frances Tillon Nicholls, Governor of the State of Louisiana have caused these letters to be made patent and the seal of the State Land Office to be hereunto affixed.

Given under my hand at the City of Baton Rouge, on the 4th day of September, in the year of Our Lord one thousand eight hundred and ninety and of the Independence of the United States this one hundred and fifteen.

By the Governor,

FRANCES T. NICHOLLS.

Record of Patent Vol. 26, page 314.

JOHN S. LANIER,
Register of State Land Office.

101 Filed and recorded January 30, 1891.

H. F. DUPERIER,
Dty. Clk.

I hereby certify that the foregoing is a true and correct copy of the original act on file and of record in Book 21 at folio 159.

This 24th day of the month of June, A. D. 1919.

J. A. GONSOULIN,
Clerk of Court and ex-Officio Recorder,
Iberia Parish, Louisiana.

Filed July 28th, 1919.

F. G. DECUIR,
Dty. Clk.

102 *Patent, State of Louisiana to Pharr and Williams, Dated September 6th, 1890, Introduced in Evidence July 28, 1919, Marked Defendant 2.*

Filed July 28th, 1919.

Patent No. 3031.

To whom these presents shall come, Greeting:

Whereas, Pharr and Williams of the Parish of St. Mary in the State of Louisiana, purchased per certificate No. 2171, N. S. L., September 6th, 1890, the northwest quarter of southwest quarter;

east quarter of southwest quarter, north half of south half, south west quarter of north west quarter, west half of south east quarter, southeast quarter of Southeast quarter, Section 4 northwest quarter of northwest quarter, southwest quarter of southwest quarter and east half of southwest quarter of Section 3, in Township 13, south Range 11 East in the Southwestern Land District, containing five hundred and sixty 41 100 acres, according to the official plat of the survey of the said lands in the State Land Office.

Now Know Ye, that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided has given, granted and sold and by these presents does give, grant, and sell unto the said Pharr and Williams and to their heirs the above described land to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said Pharr and Williams and to their heirs and assigns, forever.

In testimony whereof, I Frances Tillon Nicholls, Governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State Land Office to be hereunto affixed.

Given under my hand at the City of Baton Rouge, on the 6th day of September in the year of our Lord One thousand eight hundred and ninety and of the Independence of the United States the 103 one hundred and fifteenth.

By the Governor,

FRANCES T. NICHOLLS.

Record of Patent Vol. 26 folio 319

JOHN S. LANIER,

Register of the State Land Office.

Filed and recorded January 30th, 1891.

H. F. DUPERIER,

Dty. Clk.

I hereby certify that the foregoing is a true and correct copy of the original act on file in my office and of record in Book 21 at folio 160.

This 24th day of the month of June, 1919,

J. A. GONSOLIN,

Clerk of Court, Iberia Parish, La.

Filed July 28th, 1919.

F. G. DECUIR,

Dty. Clk.

104 *Patent, State of Louisiana to Pharr & Williams, Dated September 6th, 1890, Filed in Evidence July 28th, 1919, Marked Defendant 3.*

Filed July 28, 1919.

Patent No. 3033.

To all to whom these presents shall come, Greeting:

Whereas, Pharr and Williams of the Parish of St. Mary in the State of Louisiana, purchased per certificate No. 2173 N. S. L., September 6th, 1890, the northeast quarter of southeast quarter, east half of northeast quarter, west half of east half and east half of west half of Section 5, in Township 13, South Range 11 East of said lands in the Southwestern Land District, containing four hundred and forty and 25/100 acres, according to the official plat of the survey of said lands in the State Land Office.

Now Know Ye, that the State of Louisiana in the consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold and by these presents, does give, grant, and sell unto the said Pharr and Williams and to their heirs, the above described land, to have and to hold the same forever, together with all the rights, titles and privileges thereunto belonging unto the said Pharr and Williams and to their heirs and assigns forever.

In testimony whereof, I, Frances Tillon Nicholls, Governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State Land Office to be hereunto affixed.

Given under my hand at the City of Baton Rouge, on the 6th day of September, in the year of Our Lord One thousand eight hundred and ninety and of the Independence of the United States the One hundred and fifteenth.

By the Governor,

FRANCES T. NICHOLLS

Record of Patents Vol. 26, page 320.

JOHN S. LANIER,

Register of State Land Office.

105 Filed and recorded January 30th, 1891.

H. F. DUPERIER,

Dty. Clk.

I hereby certify that the foregoing is a true and correct copy of the original act on file in my office and of record in Book 21 at folio 160.

This 24th day of the month of June, 1919.

J. A. GONSOULIN,

Clerk of Court, Iberia Parish, La.

Filed July 28th, 1919.

F. G. DECUIR,

Deputy Clerk.

- 106 *Patent, State of Louisiana to Pharr & Williams, Dated September 6th, 1890, Introduced in Evidence July 28th, 1919. Marked Defendant A.*

Filed July 28, 1919.

Patent No. 3026, N. S. L.

To all whom these presents shall come, Greeting:

Whereas, Pharr and Williams of the Parish of Saint Mary in the State of Louisiana, purchased per certificate No. 2166, N. S. L., September 6, 1890, west half of section twenty seven, east half of southeast quarter of Section 30 in Township 12, South Range 11 East of the southwestern Land District, containing 100.50 100 acres, according to the official plat of the survey of said lands in the State Land Office.

Now Know Ye, that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided *had* given, granted and sold and by these presents does give, grant, and sell unto the said Pharr and Williams and to their heirs the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said Pharr and Williams, and to their heirs and assigns forever.

In testimony whereof, I Frances Fillon Nicholls, Governor of the State of Louisiana have caused these letters to be made patent and the seal of the State Land Office to be hereunto affixed.

Given under my hand at the City of Baton Rouge, on the 6th, day of September, in the year of our Lord one thousand eight hundred and ninety and of the Independence of the United States the One hundred and fifteenth.

By the Governor.

FRANCES T. NICHOLLS.

Record of Patent Vol. 26, folio 326.

JOHN S. LANIER,

Register of the State Land Office.

- 107 Filed and recorded February 7th, 1891.

H. F. DUPERIER,

D'ty Clk.

I hereby certify that the foregoing is a true and correct copy of the original act on file and in my office of record in Book 21 at folio 188.

This 24th, day of the month of June, 1919.

J. A. GONSOULIN,

Clerk of Court, Iberia Parish, La.

Filed July 28, 1919.

F. G. DECUIR,

D'y Clk.

108 *Patent, State of Louisiana to Pharr and Williams, Dated September 6th, 1890, Introduced in Evidence July 28, 1919, Marked Defendant 5.*

Filed July 28, 1919.

Patent No. 3027, N. S. L.

To all to whom these presents shall come, Greeting:

Whereas, Pharr and Williams of the Parish of St. Mary in the State of Louisiana, purchased per certificate No. 2167, N. S. L., September 6th, 1890, east half of northeast quarter and northwest quarter of Section 28, Township 12, South Range 11 East, in the Southwestern Land District of Louisiana, containing 241.08 acres, according to the official plat of the survey of said lands in the State Land Office.

Now know ye, That the State of Louisiana in the consideration of the premises and in conformity with law in such case made and provided, has given, granted, and sold and by these presents does give, grant, and sell unto the said Pharr and Williams and to their heirs, the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said Pharr and Williams and to their heirs and assigns forever.

Given under my hand at the City of Baton Rouge, on the 6th, day of September *on the 6th, day of September* in the year of our Lord one thousand eight hundred and ninety and of the Independence of the United States the one hundred and Fifteenth.

In testimony whereof, I Frances T. Nicholls, Governor of the State of La., have caused these letters to be made patent and the seal of the State Land Office to be hereunto affixed.

By the Governor.

FRANCES T. NICHOLLS.

Record of Patent Vol. 26, page 317.

JOHN S. LANIER.

Register State Land Office.

109 Recorded and filed February 7th, 1901.

H. F. DUPERIER,

D'ty Clk.

I hereby certify that the foregoing is a true and correct copy of the original act on file in my office and of record in Book 21 at folio 188.

This 24th, day of the month of June, 1919.

J. A. GONSOLIN,

Clerk of Court, Iberia Parish, La.

Filed July 28th, 1919.

F. G. DECUIR,

D'ty Clk.

- 110 *Patent, State of Louisiana to Pharr and Williams, Dated September 6th, 1890, Introduced in Evidence July 28th, 1919, Marked Defendant No. 6.*

Filed July 28, 1919.

Patent No. 3028, N. S. L.

To all to whom these presents shall come, Greeting:

Whereas Pharr and Williams of the Parish of St. Mary in the State of Louisiana, purchased per certificate No. 2168, N. S. L. September 6th, 1890, East Half of Section 21, Southwest quarter of Section 29, in Township 12, South Range 11 East in the Southwest Land District, containing 180.85 acres, according to the official plat of the survey of said lands in the State Land Office.

Now know Ye, That the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided has given, granted and sold and by these presents do give, grant and sell unto the said Pharr and Williams and to their heirs the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said Pharr and Williams and to their heirs and assigns forever.

In Testimony whereof, I, Frances T. Nicholls, Governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State Land Office to be hereunto affixed.

Given under my hand at the City of Baton Rouge, on the 6th day of September, in the year of our Lord one thousand eight hundred and fifteen.

By the Governor.

FRANCES T. NICHOLLS.

Record of Patent Vol. 26, page 317.

JOHN S. LANIER,
Register State Land Office.

- 111 *Filed and recorded February 7th, 1891.*

H. F. DUPERIER,
Dty. Clk.

I hereby certify that the foregoing is a true and correct copy of the original act on file in my office and of record in Book No. 21 at folio 189.

This 24th day of the month of June, 1919.

J. A. GONSOULIN,
Clerk of Court, Iberia Parish.

Filed July 28th, 1919.

F. G. DECUIR,
Dep. Clk.

112 *Patent, State of Louisiana to Pharr and Williams, Dated September 6th, 1890, Introduced in Evidence July 28, 1919. Marked Defendant 7.*

Filed July 28th, 1919.

Patent No. 3028, N. S. L.

To all to whom these presents shall come, Greeting:

Whereas, Pharr and Williams of the Parish of St. Mary in the State of Louisiana purchased per certificate No. 2469, N. S. L., September 6th, 1890, South half of northwest quarter, southwest quarter and east half of Section 33 in Township 12, South Range 11 East in the Southwestern Land District, containing 564.40 acres, according to the official plat of the survey of said lands in the State Land Office,

Now know ye, that the State of Louisiana in the consideration of the premises and in conformity with law in such case made and provided has given, granted and sold, and by these presents does give, grant, and sell unto the said Pharr and Williams and to their heirs the above described land to have and to hold the same together with all the rights, titles and privileges, thereunto belonging unto the said Pharr and Williams forever.

In testimony whereof, I Frances T. Nicholls, Governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State Land Office to be hereunto affixed.

Given under my hand at the City of Baton Rouge, on the 6th day of September in the year of our Lord one thousand eight hundred and ninety and of the Independence of the United States the one hundred and fifteenth.

By the Governor,

FRANCES T. NICHOLLS.

Record of Patent Vol. 26, page 318.

JOHN S. LANIER,

Register of the State Land Office.

113 Filed and recorded February 7th, 1891.

H. F. DUPERIER,

Deputy Clerk of Court.

I hereby certify that the foregoing is a true and correct copy of the original act on file in my office and of record in Book No. 21 at folio 190.

This 24th day of the month of June, A. D. 1919.

J. A. GONSOLIN,

Clerk of Court, Iberia Parish, La.

Filed July 28th, 1919.

F. G. DECUIR,

Dty. Clk.

- 114 *Patent, State of Louisiana to Pharr and Williams, Int. September 6th, 1890, Introduced in Evidence July 2, 1919, Marked Independent 8.*

Filed July 24th, 1919.

Patent No. 3030, S. S. L.

To all to whom these presents shall come, Greeting.

Whereas, Pharr and Williams of the Parish of St. Mary in the State of Louisiana, purchased per certificate No. 2170 S. S. L. September 6th, 1890, West half of southeast quarter and west half of Section 31, in Township 12, South Range 11 East, in the Southwestern Land District, containing 400.52 acres, according to the official plat of the survey of said lands in the State Land Office.

Now know ye, that the State of Louisiana, in the consideration of the premises and in conformity with law in all such case and as provided have given, granted and sold, and by these presents give, grant, and sell unto the said Pharr and Williams and to their heirs the above described land to have and to hold the same together with all the rights, titles and privileges thereto belonging unto the said Pharr and Williams and to their heirs and assigns forever.

In testimony whereof, I, Francis Tillon Nicholls, Governor of the State of Louisiana, have caused these letters to be made patent at the seal of the State Land Office to be hereunto affixed.

Given under my hand at the City of Baton Rouge, on the 6th day of September in the year of Our Lord one thousand eight hundred and ninety and of the Independence of the United States the one hundred and fiftieth.

By the Governor.

FRANCIS T. NICHOLLS

Record Patent Vol. 26, page 310.

JOHN S. LAMIER,

Register State Land Office.

- 115 *Filed and recorded February 7, 1901.*

H. F. DETERIER,

Reg. Clk.

I hereby certify that the foregoing is a true and correct copy of the original as on file in my office and as recorded in Book 21 folio 190.

This 24th day of the month of June, 1919.

J. A. GARNETT JR.,

Clk. of Court, Parish of St.

Filed July 24th, 1919.

F. G. DETERIER,

Reg. Clk.

136 *Patent, State of Louisiana to Platt & Williams, dated November 29th, 1890, 1890, introduced in Louisiana July 2d, 1891, Booked September 3.*

Filed July 2nd, 1891

To all to whom these presents shall come, Greeting.

Whereas Platt and Williams of the Parish of Iberville, in the State of Louisiana, purchased per certificate No. 2231, N. & E., November 29th, 1890, east half of northwest quarter and southeast quarter of section 32, in Township 13, South Range 13, East in the South-western Land Division, containing Two hundred and thirty one and 6/100 acres, according to the official plat of the survey of said lands in the State Land Office.

Now, know ye, That the State of Louisiana in the consideration of the premises, and in conformity with law in such case made and provided has given, granted and sold and by these presents does give, grant, and sell unto the said Platt and Williams and to their heirs, the above described land, to have and to hold the same together with all the rights, titles, and privileges, thereto belonging, unto the said Platt and Williams and to their heirs and assigns forever.

In testimony whereof, I, Francis Tilton Nichols, Governor of the State of Louisiana have caused these letters to be made public, and the seal of the State Land Office to be hereunto affixed.

Given under my hand at the City of Baton Rouge, on the 10th day of November in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fiftieth.

By the Governor.

(Signed)

FRANCIS T. NICHOLS

Record of Plat No. 22, page 35.

WILLIAM & PLATT

Attorneys at Law, Baton Rouge.

137 *Order on Louisiana.*

Parish of St. Martin.

I, Auguste Bonhomme, Deputy Clerk of Court and Ex-officio Deputy Recorder in and for the Parish of St. Martin, La., do hereby certify that the above and foregoing is a true and correct copy of the original recorded Minutes 29th, 1890, in Book No. 10 of said Parish and No. 2230 of Conveyances.

In faith whereof, witness my hand and seal of office at St. Martinville, La., this 25th day of June, 1891.

AUGUSTE BONHOMME

Deputy Clerk of Court.

Filed July 2nd, 1891.

118 *Patent, State of Louisiana to Pharr and Williams, Dated September 6th, 1890, Introduced in Evidence July 28, 1919, Marked Defendant 10.*

Filed July 28th, 1919.

To all to whom these presents shall come, Greeting:

Whereas Pharr and Williams of the Parish of St. Mary in the State of Louisiana, purchased per certificate No. 2172, N. S. L., September 6th, 1890, East half of west half, and east half of Section eight, northeast quarter of northwest quarter, east half of southeast quarter and north east quarter of Section 9, in Township 13, South Range 11 East in the South Western Land District, containing 760.00 acres, according to the official plat of the survey of said Lands in the State Land Office.

N. B. T. E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of Sec. 8, in T. 13, S. R. 11, E., and the N. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ and N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Section 9, in T. 13, S. R. 11 E., is situated in Iberia Parish.

Now know ye, that the State of Louisiana in the consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold and by these presents does give, grant, and sell unto the said Pharr and Williams, and to their heirs, the above described land to have and to hold the same together with all the rights, titles and privileges, thereto belonging unto the said Pharr and Williams and to their heirs and assigns forever.

In testimony whereof, I, Frances Tillon Nicholls, Governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State Land Office to be hereunto affixed.

Given under my hand at the City of Baton Rouge, on the 6th day of September in the year of Our Lord, One thousand eight hundred and ninety and of the Independence of the United States, the one hundred and fiftieth.

By the Governor,

(Signed)

FRANCIS T. NICHOLLS

119 *Record of Patent Vol. 26, fo. 319.*

(Signed)

JAMES S. LANTIER,

Register of State Land Office.

NOTICE OF LOST LAND,
Parish of St. Martin:

I, Ignace Bienvenue, Deputy Clerk of Court and Ex-Officio Deputy Recorder in and for the Parish of St. Martin, do hereby certify that the above and foregoing is a true and correct copy from a copy of the original recorded January 29th, 1891, in Book 46 at folio 288 under No. 25512 of Conveyances.

In faith whereof, witness my hand and seal of office at St. Martinsville, La., this 25th day of June, 1919.

I. BIENVENUE,
Deputy Clerk of Court.

Filed July 28th, 1919.
F. G. DECUIR,
Deputy Clerk.

120 *Patent, State of Louisiana to Pharr & Williams, Dated November 19th, 1890, Introduced in Evidence July 28, 1919, Marked Defendant 11.*

Filed July 28, 1919.

Patent No. 1067.

STATE OF LOUISIANA:

To all to whom these presents shall come, Greeting:

Whereas Pharr and Williams of the Parish of Iberia, in the State of Louisiana purchased per certificate No. 2263 N. S. L., November 19th, 1890, Southeast quarter of northwest quarter, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and northwest quarter of northeast quarter of Section 17, in Township 13, South Range 11 East in the Southwestern Land District, Containing three hundred and nineteen and 28/100 acres, according to the official plat of the survey of said lands in the State Land Office.

Now know ye, That the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided has given, granted and sold and by these presents does give, grant, and sell unto the said Pharr and Williams, and to their heirs, the above described lands, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said Pharr and Williams and to their heirs and assigns forever.

In testimony whereof, I, Francis T. Nicholls, Governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State Land Office to be hereto affixed.

Given under my hand at the City of Baton Rouge, on the 19th day of November in the year of our Lord one thousand eight hundred and ninety and the of the Independence of the United States, the one hundred and fifteenth.

By the Governor,

(Signed)

FRANCIS T. NICHOLLS.

Record Patent Vol. 27, page 36.

JOHN S. LAXIER,
Register State Land Office.

121 STATE OF LOUISIANA;
Parish of St. Martin:

I, Ignace Bienvenue, Deputy Clerk of Court and Ex-Officio Deputy Recorder in and for the Parish of St. Martin, La., do hereby certify that the above and foregoing is a true and correct copy from a copy of the original recorded January 28th, 1891, in Book No. 46 at folio 287 under No. 22511 of Conveyances.

In faith whereof, witness my hand and seal of office at St. Martinsville, La., this 25th day of June, 1919.

I. BIENVENUE,
Deputy Clerk of Court

Filed July 28th, 1919.
 F. G. DECUR,
Deputy Clerk.

122 *Patent, State of Louisiana to Pharr & Williams, Dated November 19th, 1890, Introduced in Evidence July 28, 1919, Marked Defendant 12.*

Filed July 28, 1919.

Patent No. 4066.

STATE OF LOUISIANA:

To all to whom these presents shall come, Greeting.

Whereas, Pharr and Williams of the Parish of Iberia, in the State of Louisiana purchased per certificate No. 2262 N. S. L., November 19th, 1890, northwest quarter, north half of southwest quarter, west half of northeast quarter and north half of southeast quarter of section 21 in Township 13, South Range 11 East in the Southwestern Land District, containing 100.00 acres, according to the official plat of the survey of said lands in the State Land Office.

Now, Know ye, That the State of Louisiana in the consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, -- by these presents does give, grant and sell unto the said Pharr and Williams, and to their heirs, the above described land, to have and to hold the same, together with all the rights, titles and privileges, thereunto belonging, unto the said Pharr and Williams and to their heirs and assigns forever.

In testimony whereof, I, Francis T. Nicholls, Governor of the State of Louisiana have caused these letters to be made patent, and the seal of the State Land Office to be affixed.

Given under my hand at the City of Baton Rouge, on the 19th day of November in the year of our Lord, One thousand eight hun-

dred and ninety, and of the Independence of the United States, the one hundred and fifteenth.

By the Governor,

FRANCIS T. NICHOLLS.

Record of Patent, Vol. 27, page 36.

123

JOHN S. LANIER,

Register of the State Land Office.

STATE OF LOUISIANA,

Parish of St. Martin:

I, Ignace Bienvenue, Deputy Clerk of Court and Ex-Officio Deputy Recorder in and for the Parish of St. Martin, La. do hereby certify that the above and foregoing is a true and correct copy from a copy of the original recorded January 29th, 1891, in Book 46 at folio 286 under No. 22510 of Conveyances.

In faith whereof, witness my hand and seal of office at St. Martinsville, this 25th day of June, 1919.

I. BIENVENUE,

Deputy Clerk of Court.

Filed July 28th, 1919.

F. G. DECUIR,

Dty. Clk.

121 *Minutes of Court, Showing Action in re No. 7539, Atchafalaya Land Company, Limited, in Liquidation, vs. F. B. Williams Cypress Company et als.*

New Iberia, La., July 7, 1919.

This the Honorable 19th, Judicial District Court of Louisiana, holding session in and for Iberia Parish, met upon this day at 10 o'clock, A. M., pursuant to law: Present, The Honorable James Simon, District Judge, Presiding.

No. 7539

In re

ATCHAFALAYA LAND CO., LTD., in Liquidation,

vs.

F. B. WILLIAMS CYPRESS CO., LTD.

This cause having been heard and submitted for adjudication upon the exception of prescription of six years, and the Court considering the law and the evidence to be in favor of the Plaintiffs and against the defendants, and Exceptor, for the reasons contained and expressed in the written opinion this day delivered and filed, it is ac-

cordingly ordered, adjudged and decreed by the Court that said Exceptions be and the same are hereby over-ruled.

Extract of Minutes, July 28, 1919.

ATCHAFALAYA LAND CO., LTD., in Liquidation,

VS.

F. B. WILLIAMS CYPRESS CO., LTD., et als.

Upon motion of Plaintiff's counsel calling the Court's attention to the fact that there was no minutes entry of the agreement entered into between all of the parties to have the exception of prescription of six years heard at Chambers, the Entry is now made of said agreement, under and by virtue of which the Court rendered a decision, the exceptions having been tried at Chambers in St. Martinsville, La., under the agreement referred to and the exceptions were over-ruled by Judgment of Court rendered in Open Court on the 7th day of July, 1919. This cause being submitted on the agreed statement of facts; it is submitted with the further admission by all parties that the timber and the lands involved exceed the sum of of two 125 thousand dollars.

Extract of Minutes, July 31, 1919.

No. 7339.

ATCHAFALAYA LAND CO., LTD., in Liquidation,

VS.

F. B. WILLIAMS CYPRESS CO., LTD., et als.

This cause having been heard and submitted for adjudication, and the Court being of the opinion that the law and the evidence were in favor of the plaintiff and intervenors, and against the defendants, for the reasons orally assigned, it is accordingly ordered, adjudged and decreed by the Court that there be judgment in favor of the Plaintiff and intervenors and against the defendants as prayed for, decreeing that the land set forth in plaintiff's and Intervenor petitions to have been included in the patents of the State of Louisiana to petitioner's authors, the Board of Commissioners of the Atchafalaya Basin Levee District anterior to issuing the patent to Pharr and Williams, now F. B. Williams by the Register of the State Land Office. It is further ordered by the Court that the rights of Intervenor Schwing Lumber and Shingle Co., Ltd. to an accounting and settlement for the cypress timber cut and removed from the lands in controversy herein by the F. B. Williams Cypress Co., Ltd. be and the same is hereby reserved, also reserving the same rights to

the Atchafalaya Land Co., Ltd. The writ of judicial sequestration issued herein is hereby maintained and the writ of injunction ordered to issue as prayed for, (See decree).

Judgment was read, signed and filed.

Upon motion of Defendant's counsel, a suspensive and in the alternative a devolutive appeal returnable to the Honorable Supreme Court of the State of Louisiana, upon the 7th, day of September, 1919 sitting at New Orleans, La., was granted to the defendants, The F. B. Williams Cypress Co., Ltd., et als., upon their furnishing bond in the sum of five hundred dollars for either appeal.

F. G. DECUR,

Deputy Clerk.

Approved:

JAMES SIMON,

Judge.

126 *Judgment and Reasons for Judgment upon Trial of the Exception of no Cause or Right of Action and in the Alternative the Plea of Prescription of Six Years Provided by Act 62 of 1912*

Filed July 7th, 1919.

19th Judicial Dist. Court, Iberia Parish, La.

No. 7539.

ATCHAFALAYA LAND CO., LTD.,

VS.

F. B. WILLIAMS CYPRESS CO., LIMITED, et als.

Reasons.

This suit was met by the exception of no cause and no right of action, and in the alternative by the plea of prescription of six —, provided by Act 62 of 1912.

The presentation of the former exception and the argument of counsel thereunder somewhat infringes upon the merits of the case. In deciding it I desire to refrain from passing upon any of the issues involved on the main demand.

I was first inclined to refer that exception to the merits, but I believe it can be disposed of under certain decisions of the Supreme Court of this State wherein similar contentions, raised by the exception have been passed upon and adjudicated contrary to the contention of exceptor.

I say this because the suit is predicated upon the right which petitioner has under the grant to the Atchafalaya Basin Levee District Board, which amounts to a contract between the State and the Levee Board and its assigns, under Act 97 of 1890, and the sale of the

Levee Board to Wisner and Dresser, to require title to be made at any time, and not upon the act executed to it, the petitioner.

The prayer of the petition, which governs the action, is to have recognized the land in controversy as included in said grant
127 by the State to said Levee Board, and by the latter transferred to Wisner and Dresser, and in accordance therewith and with the allegations in the petition that the patents to the land, issued by the State after the grant made by the State, were wrongfully issued and should be decreed a nullity.

Hence, a cause of action on the face of the petition, as well as under the law, is fully set out, and the right of petitioner to proceed in this manner is fully vested in it under said grant by the State to the Levee Board, and the sale by the latter to Wisner and Dresser, with full right to stand in judgment in all such matters as fully as the Levee Board, because by said grant all lands in the Levee District were subject to the claim of the Levee Board and its assigns from its date.

This proposition of law is fully sustained in the case of the Atchafalaya Land Co. vs. Grace, reported in the 143 La. 638, where it is said:

"This Court has several times, had occasion to consider the effect of the grants in the Act 97 of 1890, and similar statutes and the act 215 of 1908, when construed together, and here held the statute last mentioned to be inapplicable to claim for lands granted under those first mentioned, or under contracts with the grantees; that, in effect, the State had parted with the lands conveyed to the Levee Board, that they were not thereafter open to entry as lands of the State, and that having been subject to the disposition of the Levee Board, the contract made by these Board with reference to them could be affected by subsequent legislation."

109 La. 640,-111, La. 913, 126 La. 492, 128 Pa. 283.

In the 142 La. Am. 111, State ex rel. Atchafalaya Basin Levee Board, vs. Capdeville, Auditor, it is held that—

"Act 97 of 1890, contemplates that the donation of land to the Atchafalaya Basin Levee Board therein contained should stand open indefinitely for acceptance, and that the lands should be con-
128 veyed to the Board from time to time, as requested by it, and that the Act is unaffected by Act 215 of 1908; hence the request that the Board now makes of the State Auditor and Register of the State Land Office to execute conveyances of the land so donated, is as well within the law, as it has ever been, and as the ministerial duty rests upon those officers to comply with the request, mandamus will be to compel such compliance. Applying that rule to the instant case, we can discover no appreciable difference between the position of the plaintiff therein standing in the place and exercising the rights of the Board of Commissioners, (which by its contract it is expressly authorized to do) and the Board itself, if it were before the Court, instead of the transferee; and as the Board, (as between

it and defendant) would have the right to demand a title to the land in dispute, so its transferee has the right to protect the title acquired from the Board by stopping the defendant- in their attempts to sell the lands to a third person."

The exception of no cause and no right of action must, therefore, be over-ruled.

The contention raised by counsel under the plea of prescription has been forcibly presented to this Court both in oral argument and briefs. I have given the question most careful study and attention; and I have carefully read most of the authorities submitted by both sides.

The plea of prescription is based on Act 62 of 1912, which provides that:

"All suits or proceedings of the State of Louisiana, private corporations, partnerships, or persons to vacate and annul any patent issued by the State of Louisiana, duly signed by the Governor of the State and the Register of the State Land Office, and of record in the State Land Office, or any transfer of property by any subdivision of the State, shall be brought only within six years
129 from the issuance of patent, provided that suits to annul patents previously issued shall be brought within six years from the passage of this Act."

The Act under which this plea was filed has been attacked by the defendants in exception as violative of Sec. 10, Art. 1 of the Constitution of the United States, and Article 166 of the Constitution of this State, contending that the application of this law to contracts already in existence that it diverts vested rights and impairs the obligation of a contract, and is, in this particular instance, violative of the Federal Constitutional inhibition against depriving one of property without due process of law.

The Legislative Act of 1890 was a contract whereby the State bound itself to make title at any time to the Levee Board, and its assigns; it is a continuous right granted by the State and vested in said Board and its assigns, to demand title from the State at any time. This has been recognized and the Status of the plaintiff as to such rights has been fixed by the Jurisprudence of this State in the two Louisiana Annuals previously cited. That option to demand title at any time being a part of the contract cannot be restricted by any status of limitation, nor can the Legislature enact a status saying that a right of this character must be exercised within a fixed time. Such status of limitation apply to cases where no existing or vested right exists; and when it takes away such rights, it violates the Federal and State Constitution, and is unconstitutional, and, as applied to contracts existing at the time it was enacted its enforcement would be an impairment of such a contract and falls within the inhibition of the Federal Constitution against depriving one of property without due process of law. Reading from the Encyclopedia of United

130 States Supreme Court Reports Vol. 6 paragraph *b* page 880, I find the following annunciation: " * * * But a statute of limitation which takes away a present existing right or makes an unreasonable reduction of the time for bringing suits, is unconstitutional," which is the case here presented, except, however, that the time for bringing suits coming thereunder is not unreasonable.

It is not disputed that the Legislature has the right to fix a period of limitation within which suits must be instituted, nor is it disputed that the Legislature had the right to enact the present statute of limitation, but such statute cannot impair nor take away present existing rights, nor deprive one of property without due process of law.

This statute of limitation relied on by exceptor to defeat plaintiff's rights, does not apply to this case, for reason, that it is violative, in this particular instance, of the Federal Constitutional inhibition against depriving one of property without due process of law, destroys and divests a vested right and impairs the obligation of a contract between the State and the Levee Board and its assigns.

There are numerous decisions in which this doctrine has been thoroughly discussed, and which are in line with the doctrine herein annunciated, but it will be sufficient for the present purpose to mention a few only without questing any of their parts in these reasons. *Barnitz vs. Beverly*, Sup. Court Rep., Vol. 16, p. 1042; *Bettman vs. Crowley*, L. R. A., Book 40, p. 815; *Brownson vs. Kinzie*, et als., U. S. Sup. Rep., Book 11, p. 143; U. S. Sup. Rep., Book 24, p. 793; *Edwards vs. Kearzey*; *Chapman vs. County of Douglas*, 27, L. R. A., p. 71, U. S. 106, 108, pp. 699, 1 & 2; *Lawrence vs. City of Louisville*, L. R. A., Book 27, p. 560, Sup. Ct. Reports, Book 3, p. 162; *Fletcher vs. Peck*, Ency. of U. S. Sup. Court Reports, Vol. 6, paragraph *b*, p. 883, -20A, 553; *Myers vs. Mitchell*, 109 La. 131 Am. 710, *Blaner vs. Ledet*, 8, Wheat; *Green vs. Biddle*, 31A, 765, -32, A-111, 40, L. R. A., p. 817, *Bestman vs. Conle*.

Without pursuing the subject any further, I, therefore hold that the Act in question is unconstitutional so far as it refers to contracts which were in existence at the time the law was enacted.

The present case being one of that nature, it has no application to it, and the prescription pleaded must be over-ruled.

JAMES SIMON,

Judge 19th Judicial District Court.

Filed July 7, 1919.

F. G. DECUIR,

Dy. Clk.

132 *Judgment Read, Signed and Filed on Trial of Cause on Merits.*

Filed July 31st, 1919.

This is a suit in which the Atchafalaya Land Company, Limited, in Liquidation, claiming to be the assignee of the interests of Ed-

ward Wisner and J. M. Dresser, acquired from the Board of Commissioners of the Atchafalaya Basin Levee District, and all lands or rights of land acquired by said Board of Commissioners of the State of Louisiana by virtue of the grant set forth in the provisions of Act 97 of the General Assembly of 1890, complaining that pending the exercise of its rights as to securing deed from the State of Louisiana under the terms of its contract, F. B. Williams secured from John S. Lanier, Register of the State Land Office, after the land had been deeded to the Board of Commissioners of the Atchafalaya Basin Levee District, patents appearing from the evidence to be Nos. 3021, N. S. L., 3031, 3033, 3026, N. S. L., 3027, N. S. L., 3028, N. S. L., 3029, N. S. L., 3030, N. S. L., 4065, 4066, 4057, and 3032 and covering the lands described as follows:

The east half of the west half and east half of Section 8, N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, and N. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, Section 9, containing 760.08 acres; N. W. $\frac{1}{4}$, N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, Section 21, containing 400 acres; E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and S. E. $\frac{1}{4}$, Section 35, containing 239 acres.

S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$; S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$; N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$; N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Section 17, containing 319.28 acres.

N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$; S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$; N. $\frac{1}{2}$ of N. $\frac{1}{2}$; S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$; W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Section 4.

N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$; S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$; E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, Section 3, containing 561.41 acres.

133 N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$; E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$; W. $\frac{1}{2}$ of E. $\frac{1}{2}$; E. $\frac{1}{2}$ of W. $\frac{1}{2}$, Section 5, containing 440.25 acres.

All being in Township 13, South Range 11 East, Louisiana Meridian.

And E. $\frac{1}{2}$ of Section 21 containing 320.42 acres. W. $\frac{1}{2}$ of Section 27, containing 320.50 acres.

E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, and N. W. $\frac{1}{4}$ of Section 28 containing 241.08 acres.

S. W. $\frac{1}{4}$ Section 29, containing 161.08 acres.

E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ Section 30, containing 80 acres.

S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$; S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Section 33 containing 561.19 acres.

W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, and W. $\frac{1}{2}$ of Section 34 containing 400.62 acres.

All being situated in Township 12, South Range 11 East, Louisiana Meridian.

And the plaintiff further averring that the Board of Commissioners of the Atchafalaya Basin Levee District obligated itself under the terms of its contract to lend all of its machinery and offices to vindicate the rights of petitioners to the lands included in the transfer to Wisner and Dresser, ask that the Board of Commissioners be made parties to the suit for the purpose of complying with the obligations alleged to have been incurred by it.

The prayer of the petition is one asking that the land set forth be declared to have been included in the grant by the State of Louis-

iana to the Board of Commissioners of the Atchafalaya Basin Levee District anterior to any pretended title set forth in the patents issued by John S. Lanier, Register of the State Land Office, to Frank B. Williams; that the patents be declared absolutely null and void, and that the defendant be enjoined and restrained from further trespassing upon the lands; or from cutting and removing any timber therefrom, or in any manner interfering with the rights
134 and privileges of the plaintiffs.

The Board of Commissioners of the Atchafalaya Basin Levee District filed an answer to the suit which it asked to be considered also as an intervention, making declaration that it recognized the Atchafalaya Land Company, Limited, in Liquidation, as the assignee of Wisner and Dresser interests, and joined in the prayer of the plaintiff to have vindicated the rights of the Intervenor for the benefit of the Plaintiff, its recognized assignee.

The Schwing Lumber & Shingle Company, Limited, intervened claiming to be the assignee of the timber rights in the property by virtue of various conveyances as set forth in the original petition of intervention and the amendment thereto.

The defendants having originally filed exceptions of no cause and no right of action, and the prescription of six years directed against the attacks on the patents, and which exceptions were tried and overruled, and having in the intervention hereinabove set forth renewed the exceptions, and also having coupled in the answers the exceptions of one year's prescription as to the demand in damages for the removal of the timber, and the prescription of ten years based on alleged possession in good faith, and the Court upon reading the pleadings, having come to the conclusion to issue an order of judicial sequestration, which was accordingly done, the cause having been assigned for trial on a statement of facts admitted by the plaintiffs, defendants and intervenors, and considering the law and the evidence, and the same being in favor of the Atchafalaya Land Company, Limited, in Liquidation, the Board of Commissioners of Atchafalaya Basin Levee District, Intervenor, the Schwing Lumber & Shingle Company, Limited, Intervenor,

It is by reason thereof, ordered, adjudged and decreed that the exceptions of no right and no cause of action, and prescription
135 all hereinabove set forth, be and the same are hereby overruled.

It is further ordered, adjudged and decreed that there be judgment declaring that the lands just hereinabove set forth be and they are hereby declared to have been included in the transfer made by the State of Louisiana to the Board of Commissioners of the Atchafalaya Basin Levee District under the terms and provisions of Act 97 of the General Assembly of 1890.

It is further ordered, adjudged and decreed that the patents hereinabove numbered, embracing and covering the lands hereinabove described, and which were issued by John S. Lanier, Register of the State Land Office, on dates subsequent to the enactment of Act No. 97 of the General Assembly of 1890, while the said Act was operative

are declared to have been issued by the said Lanier without authority, and are null and void, and of no effect.

It is further ordered, adjudged and decreed that considering the petition and prayer of the plaintiff, and the intervention of the Board of Commissioners of the Atchafalaya Basin Levee District joining the plaintiff and asserting the right to require deed to said lands to be made to the said Board of Commissioners of the Atchafalaya Basin Levee District for the benefit of the Atchafalaya Land Company, Limited, the recognized assignee of Wisner and Dresser; the lands above described are hereby decreed to have been within the transfer made by the State of Louisiana to the Board of Commissioners of the Atchafalaya Basin Levee District, and subject to completion of title by deed from the State to the said Board of Commissioners of the Atchafalaya Basin Levee District, in accordance with the terms and provisions of Act 97 of the General Assembly of 1890 for the benefit of the assignee of the rights, title, and interest of said Board of Commissioners of the Atchafalaya Basin Levee District.

136 It is further ordered, adjudged and decreed that the intervention of the Schwing Lumber & Shingle Company be maintained to the extent of recognizing the said intervenor as the assignee of Wisner and Dresser, and the Atchafalaya Land Company, Limited, in Liquidation, representing the Wisner and Dresser interests, in all of the rights to the cypress timber on the lands described hereinabove.

It is further ordered, adjudged and decreed that the writ of judicial sequestration issued herein be and it is hereby maintained, and that the Sheriff be and he is hereby directed to deliver unto the Schwing Lumber & Shingle Company, the cypress timber sequestered, including such timber as may be cut and prepared for market, as well as all other cypress timbers situated on said lands hereinabove described, and the proceeds of such sequestered timber as may have been sold, and that he make similar delivery unto the Atchafalaya Land Company, Limited in Liquidation, of all other timbers so sequestered exclusive of the cypress.

It is further ordered, adjudged and decreed that the rights of the Intervenor, Schwing Lumber & Shingle Company, Limited, to an accounting and settlement for cypress timber cut and removed from the lands hereinabove described, by the F. B. Williams Cypress Company, Limited, be and the same are hereby reserved, and that the rights of the Atchafalaya Land Company, Limited, in Liquidation, to an accounting and settlement for timber exclusive of the cypress timber belonging to the Schwing Lumber & Shingle Company, Limited, be and the same are hereby reserved.

It is further ordered, adjudged and decreed that the F. B. Williams Cypress Company, Limited, be and it is enjoined and prohibited from further interfering with the rights of the plaintiffs, Atchafalaya Land Company, Limited, in Liquidation, and the intervenors, the
137 Board of Commissioners of the Atchafalaya Basin Levee District, and the Schwing Lumber & Shingle Company, Limited, by exercising in any manner any further right, claims, or pretense of ownership upon the property described hereinabove, or from inter-

being in any manner with the exercise of the rights of the Board of Commissioners of the Archdiocese Basin Levee District or its assigns, the Archdiocese Land Company, Limited, in liquidation and the following Levee and Shingle Company, Limited, as their interest appears or hereinafter may result.

Thus done, read and signed in open Court this 15th day of July A. D. 1919

JAMES S. WILSON,

Judge, 1919, Judicial District Court

Filed July 31, 1919

F. B. WILSON

Att'y at L.

120. *Whereas and Order of Appeal to Supreme Court in District of F. B. W. Wilson & Company, Limited.*

New Orleans, La., July 23, 1919

This, the Honorable 1919 Judicial District District Court of Louisiana, holding session in and for Boss Parish, met upon the day of the week, A. D. pursuant to adjournment, Present, The Honorable James Wilson, District Judge presiding

In re

No. 7589

vs. F. B. WILSON & COMPANY, in liquidation

vs.

F. B. WILSON & COMPANY, Inc., et al.

It now remains to be determined whether a writ of habeas corpus and in the alternative a writ of appeal is returnable to the Honorable Supreme Court of the State of Louisiana, upon the 25th day of September, 1919, sitting at New Orleans, La., was granted to defendants, F. B. WILSON & COMPANY, Inc., et al., upon their furnishing a bond in the sum of Five hundred dollars for their appeal.

F. B. WILSON

Att'y at L.

Approved

JAMES S. WILSON,

Judge.

189

Board of Appeal.

Filed and Accepted August 25, 1910.

190 And the Court, Board of Home Insurance.

No. 5589.

WILLIAMSON & COMPANY, Inc. vs. THE BOARD OF APPEAL.

vs.

F. B. WILLIAMS & COMPANY, Inc. vs. THE BOARD OF APPEAL.

Intervention of Selling Houses & Single Companies, Inc. and Board of Commissioners of Antislavery Home Loan Bureau.

Separate Appeal Board.

Know all men by these presents, That as F. B. Williams and F. B. Williams & Company, Limited, as intervenors and Home S. Pham, as intervenor, are both and jointly bound unto a certain Court of the Court for the 1910 National Home Loan Bureau, Board of Home Insurance, the undersigned, as intervenors, as assignors, in the sum of five hundred dollars (\$500.00) to the extent thereof to said intervenors and Home S. Pham, as assignors, jointly by these presents.

Dated at New Home Insurance the 25th day of August 1910. Whereas the above named F. B. Williams and F. B. Williams & Company, Inc. (hereinafter and hereinafter in the above cases, hereinafter) are both and jointly bound unto a certain Court of the Court for the 1910 National Home Loan Bureau, Board of Home Insurance, the undersigned, as intervenors, in the sum of five hundred dollars (\$500.00) to the extent thereof to said intervenors and Home S. Pham, as assignors, jointly by these presents.

Now the condition of the obligation is such that the intervenors, F. B. Williams and F. B. Williams & Company, Inc. (hereinafter and hereinafter in the above cases, hereinafter) shall jointly and severally, as assignors, jointly by these presents, as assignors, in the sum of five hundred dollars (\$500.00) to the extent thereof to said intervenors and Home S. Pham, as assignors, jointly by these presents.

F. B. WILLIAMS & COMPANY, Inc. (hereinafter and hereinafter in the above cases, hereinafter).

By F. B. WILLIAMS.

Per F. B. Williams.

F. B. WILLIAMS.

By ROBERT HENRI, HENRI & HENRI.

Per F. B. Williams.

By S. PHAM.

Per S. Pham.

STATE OF LOUISIANA,
Parish of Iberia:

Before me, the undersigned authority, personally came and appeared Henry N. Pharr, who, being by me first duly sworn, depose and says: That he is the surety on the above bond, and that he is worth, over and above all his debts and obligations and over and above all exemptions to which he is entitled by law, if any, in assets that can be subject to levy under execution, the amount for which he has bound himself as surety on said bond.

H. N. PHARR.

Subscribed and sworn to before me on this 5th day of August, A. D. 1919.

F. W. BAUMAN,
Notary Public.

Filed and accepted August 5, 1919.
 F. G. DECUR,
Dty. Clk.

141

Statement of Facts.

Filed July 28th, 1919.

PARISH OF IBERIA,
State of Louisiana:

19th Judicial Dis. Court.

No. —.

ATCHAFALAYA LAND CO., LTD. (in Liq.).

vs.

F. B. WILLIAMS CYPRESS CO., LTD., et als.

Statement of Facts.

It is admitted that the deeds and contracts referred to in the original and amended petition of plaintiff, and in the petition of intervenor were executed, as follows:

1. Contract between Board of Commissioners of the Atchafalaya Basin Levee District and Edward Wisner, dated July 9th, 1900.

2nd. An agreement between the Board of Commissioners of the Atchafalaya Basin Levee District and Wisner and Dresser, dated April 11th, 1904.

3rd. Deeds from South Louisiana Land Co. Ltd., to Atchafalaya Land Co. Ltd., by act before J. G. Eustis, Notary, dated December 30th, 1908.

4th. Deeds from South Louisiana Land Co. Ltd., and North Louisiana Land Co., to Schwing Lumber & Shingle Co. Ltd., by act before same Notary, November 23rd, 1907.

Certified copies of these contracts are filed in evidence^d, marked Exhibits, "A," "B," A-1; B-1, C; C-1, D; D-1."

It is admitted that patents were issued in September and November, 1890, to Pharr and Williams, a partnership composed of John N. Pharr and F. B. Williams, covering the lands described in the petition, duly certified of which patents are filed herein, marked 142 "Defendant Exhibits, "1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, & 12."

That said patents were issued for a cash consideration of seventy five cents, (75c) per acre, the price fixed by law, which was paid to the State of Louisiana, as evidenced by Plaintiff Exhibit "E," that said patents were signed by the Governor of the State and the Register of the State Land Office, and duly recorded in the Parishes of Iberia and Saint Martin and in the State Land Office as indicated upon the certified copies filed in evidence; that the interest of said Pharr was conveyed to F. B. Williams by act dated March 28th, 1892 recorded in the Parish of Iberia, on April 6th, 1892, and in the Parish of St. Martin on April 3, 1892; that the interest of F. B. Williams was conveyed to E. B. Williams Cypress Co. Ltd., by deed dated May 23, 1903, recorded May 26th, 1903, and that the deeds evidencing said transfers were duly and seasonably recorded in the proper records of the Parishes of Iberia and Saint Martin.

It is admitted that F. B. Williams would testify that, at the time patents were issued to the lands in contest, he did not know of the existence of Act 97 of 1890.

It is further admitted that Pharr & Williams, F. B. Williams, and F. B. Williams Cypress Co. Ltd., have paid taxes upon the lands involved in this suit continuously since 1890.

It is admitted that Pharr and Williams, F. B. Williams, and the F. B. Williams Cypress Co., Ltd., have had possession set out in defendant's answer.

It is admitted that the Atchafalaya Land Co. Ltd., and the Schwing Lumber & Shingle Co. Ltd., employed abstractors in the latter half of 1918 to abstract all the lands within the Atchafalaya Basin Levee District with a view of ascertaining what lands they might lay claim to under the contract alleged in the petition, and that as a result of the investigation by the abstractor the present suit was brought.

143 It is admitted that these lands are located within the confines of the Atchafalaya Basin Levee District.

Subject to the objection that it is immaterial and irrelevant, and that the practice of the Levee Board cannot affect the legal situation in this case, it is admitted that V. M. Lefebvre, President of the Board of Commissioners of the Atchafalaya Basin Levee District, would testify that it has been the practice of the Board to make deed direct to

the Atchafalaya Land Company, Limited, recognizing them as assignees of Wisner and Dresser, or to any person indicated by the Atchafalaya Land Co., Ltd.

It is admitted that the said Lafelyre would testify on cross examination, subject to objection, that no deed has in fact been executed by the Board of Commissioners of the Atchafalaya Land Company, Limited, or to any person designated by it covering the lands or timber involved in this suit.

It is admitted that Frank B. Williams, owned, at the time that he transferred the property to the F. B. Williams Cypress Co., Ltd., ninety per cent (90%) of the stock, and that the remainder was held by members of his family.

It is admitted that all of the officers of the Atchafalaya Land Company, Limited and all the officers of the Schwing Lumber & Shingle Co., Ltd., are residents of the State of Louisiana, and have been so for many years; that the Atchafalaya Land Company, Limited, and the Schwing Lumber & Shingle Co., Ltd., have dealt exclusively in swamp lands in the Parishes of Iberia and St. Martin; that the Schwing Lumber & Shingle Co., Ltd., is the owner of lands in said parishes within three to five miles of the lands involved in this suit, and has been familiar with the fact that the F. B. Williams Cypress Company, Limited, is a large operator in said Parishes, and that neither the Atchafalaya Land Company, Limited, nor the Schwing Lumber & Shingle Co., Ltd., ever asserted any claim to the lands or timber involved in this suit or attempted to exercise any acts of possession thereon prior to the institution of this suit.

It is admitted that Filais Gath, the swamp and timber foreman of the Schwing Lumber & Shingle Co., Ltd., whose duty it was to look after and report depredations on timber belonging to that Company, had visited the camp of the F. B. Williams Cypress Co., Ltd., on the lands involved in this suit more than a year prior to its institution and was familiar with the operation of the F. B. Williams Cypress Co., Ltd., on said lands and with their removal of timber therefrom.

It is admitted that at that time the said Gath did not know of any claim by the Schwing Lumber & Shingle Company, Limited to said lands.

It is admitted that while the Schwing Lumber & Shingle Co., Ltd., through said Gath had such knowledge of the operations of the F. B. Williams Cypress Co., Ltd., as is legally chargeable and imputable to said Schwing Lumber & Shingle Co., Ltd., through the knowledge of their representative, Gath, said Schwing Lumber & Shingle Co., Ltd., did not, prior to the report of the abstractors whom it had employed, know the status of its claim to said lands, and it is admitted that as to these particular lands the report of the abstractor was not made until the early part of 1919.

It is admitted that neither the Atchafalaya Land Company, Ltd., now the Schwing Lumber & Shingle Co., Ltd., ever asserted any claim to the lands or timber involved in this suit or attempted to exercise acts of possession thereon prior to the institution of this suit.

It is admitted that, if permitted to testify over the objections of defendant, J. M. Dresser, would undertake to testify that there was a

verbal understanding between himself and the late Edward Wisner, now deceased, that Wisner would organize a company to take over lands to which claim might be made under the contract with the Board of Commissioners of the Atchafalaya Basin Levee District lying south of the Southern Pacific Railroad, and that Dresser would organize a company to take over lands to which claim might be made under said contract lying north of the Southern Pacific Railroad; that he would further testify that the titles heretofore made to the Atchafalaya Land Company, had been made under said verbal agreement.

It is agreed that defendant would object to the introduction of hearing of any such understanding on the ground that title to real estate cannot be made by parole, much less by verbal understandings; and that no rights of defendant can be varied or affected by any such tacit understanding as the said Dresser might undertake to testify to.

July 24th, 1919.

BORAH, HIMEL, BLOCH & BOARH,
HALL, MONROE & LEMANN,

Attorneys for Defendants.

BURKE & SMITH &
F. E. DELAHOUSSAYE,

Attorneys for Plaintiff.

BURKE & SMITH,

For Schwing Lumber & Shingle Co.,
J. H. MORRISON,

Attorney for Intervenor.

Filed July 28th, 1919.

F. G. DECUIR,

Deputy Clerk.

146 STATE OF LOUISIANA,

Parish of Iberia:

Clerk's Office,

New Iberia,

I, F. G. Decuir, the undersigned Deputy Clerk of Court duly commissioned and qualified in and for the Parish and State aforesaid, do hereby certify that the foregoing pages in the within transcript are true and correct copies of all documents filed, evidence adduced and proceedings had in that certain cause wherein The Atchafalaya Land Company Limited, in Liquidation are plaintiffs and the F. B. Williams Cypress Company, Limited, et. als., are defendants and the Board of Commissioners of the Atchafalaya Basin Levee District are Intervenor No. 1, and the Schwing Lumber and Shingle Company, Limited, are Intervenor No. 2, bearing No. 7539 of the Civil Docket of the District Court for the Parish of Iberia, Louisiana.

In faith whereof, witness my hand and seal of office this 14th, day of August, 1919.

[Seal of the Clerk of District Court, Parish of Iberia, La.]

F. G. DECUR,
Deputy Clerk of Court,
Iberia Parish, Louisiana.

147 *Proceedings Had in the Supreme Court of the State of Louisiana, as per Agreement, as to Preparation of Transcript to be Forwarded at Page 191 of This Transcript.*

Final Judgment

(Extract from the Minutes.)

New Orleans,
Monday, March 1st, 1920.

The Court was duly opened, pursuant to adjournment. Present—Their Honors Frank A. Monroe, Chief Justice, And Olivier O. Provosty, Walter B. Sommerville, Charles A. O'Niell and Ben C. Dawkins, Associate Justices.

His Honor, Mr. Justice O'Niell, pronounced the opinion and judgment of the Court in the following case:

No. 23,733.

ATCHAFALAYA LAND COMPANY, LTD., in Liquidation,

vs.

F. B. WILLIAMS CYPRESS COMPANY, LTD., et al.

The judgment appealed from is annulled, and it is now ordered, adjudged and decreed that appellant's plea of prescription of six years, under the Act No. 62 of 1912, be and the same is hereby sustained, and that the demands of the plaintiff and interveners herein be and they are hereby denied and rejected. The Schwing Lumber & Shingle Company is to pay the costs incurred by its intervention; and the plaintiff is to pay all other costs of this suit.

Their Honors, the Chief Justice and Mr. Justice Provosty, take no part.

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Opinion of the Court.

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana,

New Orleans,
Monday, March 1st, 1920.

The Court was duly opened, pursuant to adjournment.
Present—Their Honors: Frank A. Monroe, Chief Justice; Olivier D. Proxosty, Walter B. Sommerville, Chas. A. O'Niell, Ben C. Dawkins, Associate Justices.
His Honor, Mr. Justice O'Niell, pronounced the opinion and Judgment of the Court in the following case:

149

No. 23733.

March 1, 1920.

ATCHAFALAYA LAND COMPANY

VS.

F. B. WILLIAMS CYPRESS COMPANY et al., BOARD OF COMMISSIONERS of the Atchafalaya Basin Levee District and Schwing Lumber & Shingle Co., Interveners.

Appeal from the Nineteenth Judicial District Court, Parish of Iberia.

James Simon, Judge.

O'NIELL, J.:

This is an action to annul twelve land patents issued to Pharr & Williams, from whom the defendant F. B. Williams Cypress Company derived title, for several tracts of swamp land in the Parishes of Iberia and St. Martin, and to have the lands decreed subject to transfer by the state to the Board of Commissioners of the Atchafalaya Basin Levee District, under the statute creating the levee district.

Plaintiff claims that it is the right and duty of the Board of Commissioners of the Levee District to demand, and the duty of the State Auditor and the Register of the State Land Office to grant, a deed or instrument of conveyance, pursuant to Section 14 of the statute; and that the board is obligated to transfer the lands to plaintiff, as assignee and subrogee of the rights acquired by Edward Wisner and John M. Dresser, under a contract with the board, dated July 9, 1909, and confirmed April 11, 1904.

Plaintiff therefore prayed that the Board of Commissioners be cited to join in a vindication of plaintiff's rights, and, in the event

of the board's failure so to do, that there should be reserved to plaintiff such right or cause of action as might arise, whether in damages or otherwise, for nonperformance of the obligation 150 of the board.

The Board of Commissioners answered, praying that its pleading be regarded as a petition of intervention, adopting the principal allegations of plaintiff's petition, and joining in the prayer for annulment of the patents under which the defendant F. B. Williams Cypress Company claims title to the lands.

The Schwing Lumber & Shingle Company filed a petition of intervention, claiming title to the cypress timber on the lands by purchase from Wisner and Dresser, and joining in plaintiff's prayer for annulment of the patents under which the defendant F. B. Williams Cypress Company claims title.

The defendant filed an exception of no cause or right of action, and a plea of prescription of six years, under the statute of limitation, Act No. 62 of 1912 (p. 73). Defendant also pleaded the prescription of ten years, *acquiescenti causa*, and, in bar of the Schwing Lumber & Shingle Company's demand for the value of the timber already taken from the lands, the prescription of one year. Answering the petitions of the plaintiff and interveners defendant averred that the patents issued to Pharr and Williams were valid because they were issued within six months after the enactment of the statute creating the levee district, during which six months, the board of commissioners had no right, as defendant contends, to demand an instrument of conveyance from the land department.

Judgment was rendered in favor of the plaintiff and interveners, overruling defendants' exception and plea of prescription, decreeing null the patents under which defendant claims title, and declaring the lands "subject to completion of title by deed from the State to the Board of Commissioners of the Atchafalaya Basin Levee District, in accordance with the terms and provisions of Act 97 of the General Assembly of 1890, for the benefit of the assignee of the rights, title and interest of said Board of Commissioners," etc.

From which judgment, the defendant F. B. Williams Cypress Company prosecutes this appeal.

The lands in controversy were acquired by the state by the swamp land grants, the Acts of Congress of March 2, 1849 (9 Stat. 352, c. 87) and of September 28, 1850 (9 Stat. 549, c. 84, U. S. Comp. St. §§ 4958-4960).

The Atchafalaya Basin Levee District, embracing those parts of the Parishes of Iberia and St. Martin in which the lands in controversy are situated, was created by the Act No. 97 of 1890 (p. 107) the 11th section of which act declared that all lands then belonging or that might thereafter belong to the state, within the limits of the district, were thereby granted to the board of commissioners of the levee district. It was stipulated in the act that the lands of which the state had or might thereafter become the owner by tax sales should not be transferred or conveyed to the board of commissioners until the time allowed for redemption should have expired.

and that all former owners of lands that had been forfeited for non-payment of taxes might redeem their lands at any time within six months after the passage of the act, by paying the taxes, interest, costs and penalties, to be placed to the credit of the levee district. It was further provided that, "after the expiration of said six months," it should be the duty of the state auditor and the register of the land office, on behalf and in the name of the state, to convey to the board of commissioners of the levee district, by proper instruments of conveyance, the lands thereby granted or intended to be granted and conveyed to said board, whenever, from time to time, said auditor and said register of the land office, or either of them, should be requested to do so by said board of commissioners or by the president thereof; and that, after the recording of such instrument of conveyance in the recorder's office where the land so conveyed was situated, the title thereto and possession thereof should thenceforth vest absolutely in said board of commissioners, their successors or grantors. The statute provided that the lands should be exempted from taxation "after being conveyed to and 152 while they remained in the possession or under the control of said board"; and that the board should have authority to sell, mortgage or otherwise dispose of the lands in such manner, at such times and for such prices, as the board might deem proper.

The statute was approved July 8, 1890. Within six months thereafter, that is, in September and November of that year, Pharr & Williams, a partnership composed of John N. Pharr and F. B. Williams, made cash purchases of the lands now in controversy, paying the price fixed by law, at the land office, and obtained the patents in contest, which were signed by the Governor of the State and the Register of the Land Office, and were promptly recorded in the land office and in each parish in which the lands are situated, respectively.

John N. Pharr sold his interest in the lands to F. B. Williams by deed dated March 28th, 1892, and recorded in the recorder's office of St. Martin Parish on April 3, 1892, and in the recorder's office of Iberia Parish on April 6, 1892. F. B. Williams sold the lands to the F. B. Williams Cypress Company by deed dated May 23, 1903, and recorded in the office of the recorder of the Parish of Iberia and of the Parish of St. Martin, on May 26, 1903.

It is admitted that Pharr & Williams, and, in turn, F. B. Williams and the F. B. Williams Cypress Company, paid the taxes assessed against the lands in contest every year since 1890; that they went into possession of the lands immediately after the patents were issued, exercised acts of ownership, had the timber cruised, estimated and marked, had canals dug and timber cut and removed from the lands, and did other acts of possession, openly, notoriously, and continuously, from the time the patents were issued to the date of filing of the defendant's answer to this suit.

No instrument of conveyance of the lands in contest was ever issued to the board of commissioners of the levee district; nor was any request ever made for such instrument of conveyance, as 153 provided in Section 11 of the Act 97 of 1890.

On the 9th of July, 1900, the board of commissioners transferred to Edward Wisner and J. M. Dresser, by quit-claim deed, all

of the lands that had been granted to the board by the Act 97 of 1890 that had not yet been disposed of by the board, being all of the lands then owned by the board, including all lands to which the board could then "lay just claim," and all lands that had then been sold to the state for unpaid taxes but for which deeds had not yet been made to the state or to the board of commissioners, but not including any lands that might thereafter be adjudicated to the state for delinquent taxes. The purchase price was \$120,000, of which Wisner and Dresser paid \$25,000 cash; and the remaining \$95,000 was payable in two equal semi-annual installments.

It was declared in the deed that some of the lands acquired by the board had already been sold but that deeds had not been made therefor; that the board had also agreed to make quit-claim deeds in favor of the former owners of other lands; and that the lands that were thus already bargained for or verbally quit-claimed by the board were therefore not included in the transfer to Wisner and Dresser.

The instrument did not describe any land specifically, but contained the following clauses, which are the cause of plaintiff's having had the board of commissioners cited as a defendant in this suit, viz:

"It is further agreed and understood that the said party of the first part (board of commissioners) is to lend itself, with all its rights, powers and privileges and prerogatives, to perfect its title; or the title acquired under this agreement, to all lands which it could have and the parties of the second part (Wisner and Dresser) can now justly lay claim to, and to do so whenever so requested by the parties of the second part; all proceedings, however, to be at the expense of the parties of the second part.

"It is further agreed and understood that the present agreement is not to be a complete or perfected sale, but to be in the nature of an agreement to sell, until the full sum of one hundred and twenty thousand dollars due under this agreement shall have been paid; but that, in the meantime, the said party of the first part is to make complete and final title to such specific pieces of land embraced by this agreement and to such persons as said parties of the second part may wish, provided that the price of such sale be paid direct to said party of the first part and be not less than one dollar per acre for tax lands and other high lands, and twenty-five cents per acre for marsh lands."

Thereafter, at different times, the board of commissioners, pursuant to the foregoing agreement, made quit-claim deeds, conveying a number of specified tracts of land to parties designated by Wisner and Dresser; some lands being conveyed to John M. Dresser, some to Edward Wisner, some to George G. Metzger, some to the Terrebonne Land Company (organized by Wisner and Dresser), and some to the South Louisiana Land Company (organized by Wisner and Dresser). And, on the 11th of April, 1904, a written agreement was entered into by the board of commissioners and Wisner and Dresser, and placed of record in the parishes where the lands were situated; in which instrument, the board acknowledged receipt of the balance of the purchase price from Wisner and Dresser, and

acknowledged that the board had made the quit-claims to the parties hereinabove named, pursuant to the obligation of the board and with the consent and approval of Wisner and Dresser. The purpose of the instrument was declared to be to put on record evidence that the board of commissioners had authority to make the deeds to the parties named, instead of to Wisner and Dresser, in pursuance of the contract of July 9th, 1900.

On the 23rd of November, 1907, Edward Wisner and J. M. Dresser and the South Louisiana Land Company and the North Louisiana Land Company (organized by Wisner and Dresser), sold by two deeds, to the Schwing Lumber & Shingle Company, all of the 155 cypress timber on several tracts of land, specifically described, in the Parishes of Iberia and St. Martin. The lands now in contest were not described in either deed, but each deed contained the following clause, which is the basis of the Schwing Lumber & Shingle Company's claim, as intervener in this suit, viz:

"It is understood that this contract shall cover all the lands above described and any other land owned by the said vendor in said parish not hereinabove specifically described."

By two deeds dated, respectively, the 20th and 30th of December, 1908, the South Louisiana Land Company, represented by its president, Edward Wisner, sold to the Atchafalaya Land Company, represented by its vice president, J. M. Dresser, several tracts of land, specifically described, in the Parishes of Iberia and St. Martin. The lands now in contest were not described in either deed, but each deed contained the following stipulation, which is the basis of plaintiff's claim in this suit, (the name Iberia appearing in the deed to the lands in that parish, and the name St. Martin in the deed to the lands in that parish), viz:

"The South Louisiana Land Company, Limited, also sells all of its rights to the lands in Iberia Parish, whether they are included in this deed or not by definite description; and the said South Louisiana Land Company, Limited, hereby agrees, should anything be omitted, to convey the same by definite description whenever called upon to do so; and the said South Louisiana Land Company, Limited, referring to the records of Iberia Parish, hereby does convey any and all landed interest that it may have in said parish, whether definitely described or not, reference being made to the record books of said parish for said description."

All of the deeds above mentioned were promptly and properly recorded in Iberia or St. Martin Parish, where the lands referred to were situated.

We do not find in the record a transfer by Wisner and Dresser to the South Louisiana Land Company of the rights acquired by

156 Wisner and Dresser from the board of commissioners of the levee district, as to the lands in contest. But that is a matter of no importance since both Wisner and Dresser, in their representative capacities, were parties to the transfer made by the

South Louisiana Land Company to the plaintiff in this suit. We shall therefore regard the plaintiff as having, with regard to the land in contest, whatever rights Wisner and Dresser would now have if they had not disposed of the rights they acquired from the board of commissioners of the levee district.

The statute of limitation, Act 62 of 1912, invoked by the defendant F. B. Williams Cypress Company, was approved July 5, 1912, viz:

"Be it enacted by the General Assembly of the State of Louisiana: That all suits or proceedings of the State of Louisiana, private corporations, partnerships or persons, to vacate and annul any patent issued by the State of Louisiana, duly signed by the Governor of the State and the Register of the State Land Office and of record in the State Land Office, or any transfer of property by any subdivision of the state, shall be brought only within six years of the issuance of patent, provided that suits to annul patents previously issued shall be brought within six years from the passage of this Act."

This suit was filed on the 26th of April, 1919; that is, six years and nearly ten months after the passage of the statute of limitation, nearly nineteen years after Wisner and Dresser had acquired the claim of the board of commissioners of the levee district, and more than twenty-eight years after the Pharr and Williams patents were recorded in the land office and in the parishes of Iberia and St. Martin.

Counsel for plaintiff and interveners contend that the statute of limitation cannot stand in the way of this suit without giving the law the retroactive effect of divesting a vested right and of impairing the obligation of a contract, in violation of the first paragraph of Section 10 of Article II of the Constitution of the United States,

and without depriving the plaintiff and intervener of their property without due process of law, in violation of Section 1 of the Fourteenth Amendment.

It is not contended that the six years allowed, from and after the passage of the act, was not sufficient time for the board of commissioners of the levee district, or for any person, firm or corporation claiming rights acquired from the board, to institute a suit to annul any patent that had been issued for lands of which the board of commissioners might have demanded an instrument of conveyance from the state auditor and the register of the land office. On the contrary, as far as the record discloses, no attempt was made by the board of commissioners of the levee district, or by Wisner and Dresser, or either of them, or by the South Louisiana Land Company, or the Atchafalaya Land Company, or by the Schwing Lumber & Shingle Company, to obtain an instrument of conveyance of the lands in contest, or to annul the patents that had been issued to Pharr and Williams, until the six years allowed by the statute of limitation had expired. There is an admission in the record that the Atchafalaya Land Company and the Schwing Lumber & Shingle Company employed abstractors of titles in the latter half of the year

1918 to examine the titles of all the lands within the Atchafalaya Basin Levee District, "with a view of ascertaining what lands they might lay claim to, under the contract alleged in the petition, and that as a result of the investigation by the abstractors, the present suit was brought." As this suit was brought on the 26th of April, 1919, it is apparent that the work of the title abstractors did not take many months. An examination of the records of the land office, at any time within the preceding twenty-eight years, would have disclosed that patents had been issued to Pharr and Williams for lands within the levee district, for which the board of commissioners might have demanded an instrument of conveyance, under the provisions of Section 11 of Act 97 of 1890.

In passing upon this plea of prescription or statute of repose, we disregard the question whether the provision in Section 11 of the statute creating the levee district, that the lands should not be conveyed to the board of commissioners until "after the expiration of said six months" allowed for the redemption of lands that had been sold to the state for taxes, should apply only to lands that had been sold to the state for taxes, or also to lands otherwise acquired by the state. In fact, we must assume, in deciding the question of prescription, that the lands in contest, which were not held under tax title by the state, were subject to conveyance to the board of commissioners of the levee district within the six months after the passage of the act creating the levee district; because, if we should hold that the lands were not then subject to conveyance to the board of commissioners, the patents that were issued to Pharr and Williams within the six months would have been valid *ab initio*, and there would be no reason for considering the plea of prescription or statute of repose. Although the opinion was expressed in the case of the State v. Cross Lake Shooting & Fishing Club, 123 La. 208, 48 South. 891, that the six months' period in which the lands were withheld from conveyance to the board of commissioners of the levee district applied, not only to lands acquired by the state by tax title, but to all other state lands in the district, we prefer to rest our decision of this case upon the plea of prescription or statute of repose; because the statute seems so plainly applicable that we see no reason for considering any other question in the case.

The vested right, which plaintiff's counsel contend would be divested if the statute of limitation should prevail in this case, is the right which the board of commissioners had, under Section 11 of the Act 97 of 1890, to demand and obtain from the state auditor and register of the land office an instrument of conveyance of the land now in controversy. In other words, the obligation of the contract, which plaintiff's counsel argue would be violated if the statute of limitation should prevail in this case, is the obligation incurred by the state, by the act of the legislature creating the levee district, to transfer to the board of commissioners the lands now in controversy, viz:

159 "After the expiration of said six months, it shall be the duty of the Auditor and the Register of the State Land Office, on behalf and in the name of the States, to convey to the said Board of

Levee Commissioners, by proper instruments of conveyance, the lands hereby granted or intended to be granted and conveyed to said board, whenever, from time to time, said Auditor and said Register of the State Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners, or by the president thereof; and thereafter said president of said board shall cause said conveyances to be properly recorded in the recorder's office of the respective parishes wherein said lands are or may be located; and, when said conveyances are so recorded, the title to said land, with the possession thereof, shall thenceforth vest absolutely in said Board of Levee Commissioners, its successors or grantees; said lands shall be exempted from taxation after being conveyed to and while they remain in the possession or under the control of said board."

The legislature did not, in the act creating the levee district, put a time limit upon the right of the board of commissioners to demand instruments of conveyance of the lands conveyed or intended to be conveyed by the statute. And it is well settled that, after the state was, by the act of the legislature, obligated to transfer to the board of commissioners all lands within the levee district, the officers of the land department did not have authority to issue a patent to any one else for land within the district. See *State ex rel. Board of Commissioners of Caddo Levee District v. Grace, Register*, 145 La. —, 83 South, 206, and the list of decisions there cited. But it is also well settled that the lands intended to be conveyed by the statute creating the levee district remained under the control of the legislature so long as an absolute or indefeasible title had not vested in any individual or private corporation. In *State v. Cross Lake Shooting & Fishing Club*, supra, and again in *State ex rel. Atchafalaya Basin Levee Board v. Capdevielle, Auditor*, 142 La. 111, 76 South, 327, it was held that the legislature retained the power to revoke the donation made by the statute creating the levee district, as to any land for which an instrument of conveyance had not been issued to the board of commissioners.

Far from revoking the donation or grant of any land, for which the board of commissioners might have demanded an instrument of conveyance, the Act 62 of 1912 allowed the board six years in which to demand instruments of conveyance, even of lands for which patents had been issued to other parties.

The reason why the state did not, by the act of the legislature creating the levee district, lose control over the lands, is that the board of commissioners of the district was thereby made a state agency, subject to the authority and control of the state legislature.

Counsel for plaintiff and interveners argue that the constitutional provision that prescription shall not run against the state in any civil matter is applicable to a state agency, or political subdivision, such as the levee district and that the plea of prescription or statute of repose, therefore, cannot prevail against the board of commissioners of the levee district, as intervener in this suit. Our answer is, first, that the provision in Article 193 of the Constitution, that prescription shall not run against the state in any civil matter, is

qualified thus: "unless otherwise provided * * * expressly by law." In other words, the framers of the constitution left the authority with the legislature to say whether any particular statute of prescription should operate against the state. Our second answer to the proposition is that the state has no property interest in this controversy, nor has the board of commissioners of the levee district, for that matter. If the land does not belong to the defendant, by virtue of the patents that were issued to Pharr and Williams, it belongs to the plaintiff, by virtue of the grant by the state to the board of commissioners of the levee district, the assignment by the board to Wisner and Dresser, etc. In *State ex rel. Board of Commissioners v. Grace*, supra, the defendant, holder of a patent from the state, contended that the suit to annul the patent should have been brought by the state, not by the board of commissioners of the levee district, nor the board's transferee; but the ruling was that the state had no interest whatever in the suit to annul the patent, because the result of annulling the patent would be to convey the land to the transferee from the board of commissioners of the levee district.

Although the plaintiff in this suit has, with regard to the land in contest, whatever right the board of commissioners would have if the board had not made the contract with Wisner and Dresser, the plaintiff has no greater right than the board of commissioners would have if it had not disposed of its claim. It was said in *State v. Cross Lake S. & F. Club*, supra, and repeated in *State ex rel. Board of Commissioners v. Grace*, supra, that the board of commissioners of the levee district could not convey a perfect title, or title indefeasible at the instance of the state, for any land in the district, before the board had obtained and recorded an instrument of conveyance of the land, in the manner required by the statute creating the levee district.

We know of no principle on which to sustain plaintiff's contention, that to apply the plea of prescription or statute of repose to this suit would violate the clause of the Federal Constitution forbidding the state to enact a law impairing the obligation of a contract. There are two separate and distinct reasons why the inhibition of the Federal Constitution is not pertinent to this case. The first reason is that a statute creating a state agency and investing it with authority to dispose of public lands is not a contract, within the meaning of the clause forbidding the enactment of laws impairing the obligations of contracts. The only legislative grants that are protected by the clause forbidding the enactment of laws impairing the obligations of contracts are grants made to or for the benefit of individuals or private corporations, or grants on the faith of which and according to the terms of which an individual or private corporation has acquired title. See *Black's Constitutional Law*, 2nd. Ed., p. 610, §274; and *Cooley's Constitutional Limitations*, 7th Ed. Ch. IX, pp. 387 et seq. The stipulation in the statute creating the levee district, that title to the lands should not vest absolutely in the board of commissioners until the board should obtain an instrument of conveyance and have it recorded in the parish where the land con-

veyed was situated, made it impossible for any individual or private corporation to obtain from the board an indefeasible title to any land before the issuance and registry of such instrument of conveyance to the board of commissioners. In fact, the levee board's contract with Wisner and Dresser did not purport to convey title to any land for which the board had not obtained an instrument of conveyance from the state auditor or the register of the land office. The obligation incurred by the levee board was merely to transfer to Wisner and Dresser all of the lands for which the board could obtain instruments of conveyance by virtue of the statute creating the levee district. And, until such instruments of conveyance were obtained by the board, the lands remained under legislative control by the state, as well after as before the board of commissioners contracted with Wisner and Dresser. The legislature, therefore, had the power, at any time, to limit the time within which the board of commissioners of the levee district could lay claim to lands that had been disposed of by the state directly in favor of individuals or private corporations.

The other reason, why the constitutional inhibition, against giving a statute the retroactive effect of impairing the obligation of a contract, is not pertinent to this case, is that the statute of repose, Act 62 of 1912, did not divest any one of his vested right, but, on the contrary, allowed a reasonable time for every one to assert his right.

Counsel for the plaintiff and interveners cite Cooley's Constitutional Limitations, Black's Constitutional Law, and Watson on the Constitution, in support of the well-recognized doctrine that a statute cannot, under the guise of merely changing the remedy for asserting a right or for enforcing an obligation, immediately take away the right or materially impair the means of enforcing the obligation.

The test of validity of a statute of limitation, under that doctrine, is whether it allows a reasonable time for the asser-

tion of the right or the enforcement of the obligation; and the legislature is primarily the judge of the reasonableness of the time allowed. Watson on the Constitution, Vol. 1, p. 799, under the title, What is an Impairment of the Obligation of a Contract, says:

"So, a contract may be impaired by a change in the statute of limitations. The rule is that statutes affecting existing rights are not contrary to the Constitution when they give a reasonable time to begin an action before it is barred by the statute. The question in such a case always is whether the time is reasonable, and that is left to the judgment of the legislature; and the courts will not determine it unless the error is a palpable one. It was held that nine months and seventeen days in which to sue on a cause of action which had already run nearly four years was not unreasonable."

If the time that had already run has anything to do with the question, why should we say that six years in which to sue on a cause of action that had already run twenty-two years was not a reasonable time?

We quote from Black's Constitutional Law, 2nd Ed., p. 623, this pertinent paragraph:

"The legislature may enact new or different statutes of limitation, prescribing the period within which actions on contracts must be brought, and may make them applicable to existing contracts, provided the remedy of the creditor is not thereby taken away or unreasonably restricted. That is to say, a statute of limitations cutting off all remedy on a particular contract, by prescribing a period which, as to that contract, had already expired, would be unconstitutional. But, if it leaves a reasonable time to the creditor to begin his proceedings, he cannot complain, although the time is less than it would have been if the former statute had remained in force."

It has been settled by repeated decisions of this court (beginning with the case of *Terry v. Heisen*, 115 La. 1070, 40 South, 161 (1911) that the prescription of three years, under Article 233 of the Constitution, against actions to annul tax sales, is applicable to a sale made for taxes assessed in the name of one who was not the owner of the property, and even though the sale was made without notice to the owner; and that such application of the law does not violate the constitutional prohibition against giving a law the effect of divesting a vested right, and does not deprive the owner of his property without due process of law.

A statute of March 10, 1834, establishing the prescription of five years against suits to annul sales made under execution, although the law did not purport to apply to sales that had been made before the law was enacted, was held applicable to such sales when five years had expired from and after the date of promulgation of the law. See *Bourg v. Mongenot*, 1 Rob. 331, and *Valderez v. Bird*, 10 Rob. 396. A statute of April 30, 1853, declaring: "hereafter all judgments for money, whether rendered within or without the state, shall be prescribed by the lapse of ten years from the rendition of such judgments," was held applicable to judgments rendered before the law was enacted, provided ten years had elapsed from and after the date of promulgation of the law. See *Succession of Rice*, 15 La. Ann. 649, and *Succession of Beckham*, 16 La. Ann. 352.

In support of the doctrine that a statute of limitation that allows a reasonable time for the assertion of a right or the enforcement of an obligation is not violative of the constitutional prohibition against divesting a vested right or impairing the obligation of a contract, see *Phalen v. Commonwealth of Virginia*, 8 How. 163, 12 Ed. 1030; *Town of Koshkonog v. Burton*, 104 U. S. 668, 26 L. Ed. 887; *Terry v. Anderson*, 95 U. S. 633, 24 L. Ed. 365; *Turner v. State of New York*, 168 U. S. 91, 42 L. Ed. 392; *Encl. of U. S. S. C. Reports*, Vol. I, p. 446 (c), Vol. 5, p. 589, and Vol. 6, p. 889, (c); and the cases cited in 12 Corpus Juris, p. 976, under Sec. 574. See *Cooley's Constitutional Limitations*, 7th Ed., pp. 520 et seq. See also *McNamara v. Marx*, 136 La. 159, 66 South, 704, where it was said, of a statute of repose (Act 53 of 1912) allowing only six months in which to bring a suit to annul a private sale of property

owned partly by a minor child, for the cause that only the minor's interest was sold, to effect a partition:

"We conclude that said act is operative against minors, and does not deprive them of their property without due process of law. Such legislation is not violative of the Constitution of the United States, if reasonable time be given for the commencement of an action. * * * As to the reasonableness of time, the legislature is the judge, and the courts will not interfere unless the time be so short as to amount to a denial of justice. *Jackson v. Lamphire*, 3 Pet. 280, 7 L. Ed. 679."

Counsel for the plaintiff and interveners argue that the patents in contest were absolutely null, not susceptible of confirmation by a statute of repose, because the officers who signed and issued them were without authority to do so, after the enactment of the statute creating the levee district in which the lands were embraced. The answer is that the patents were in the form prescribed by the statute of limitation: that is, they were "duly signed by the Governor of the State and the Register of the State Land Office, and of record in the State Land Office." Conceding that the Governor of the State and the Register of the Land Office were without authority to issue the patents, the legislature had authority to ratify and confirm their acts, as was done by the statute of repose. As was said of a similar statute of limitation enacted by the Congress of the United States, in *United States v. Chandler-Dunbar Water Power Company*, 209 U. S. 447, 52 L. Ed. 881:

"The statute presupposes an instrument that might be declared void. When it refers to 'any patent heretofore issued,' it describes the purport and source of the instrument, not its legal effect. If the act were confined to valid patents, it would be almost or quite without use."

Our conclusion is that the district court should have sustained the defendant's plea of prescription of six years, under the statute 196 of limitation, Act 62 of 1912.

The judgment appealed from is annulled, and it is now ordered, adjudged and decreed that appellant's plea of prescription of six years, under the Act No. 62 of 1912, be and the same is hereby sustained, and that the demands of the plaintiff and interveners herein be and they are hereby denied and rejected. The Schwing Lumber & Shingle Company is to pay the costs incurred by its intervention; and the plaintiff is to pay all other costs of this suit.

Monroe, C. J., and Provosty, J., take no part.

[Endorsed.] 23733. Atchafalaya Land Co.

167

(Motion for Rehearing.)

Supreme Court of the State of Louisiana,

No. 23733.

ATCHAFALAYA LAND CO., LTD. (in Liquidation), Plaintiff, Appellee,

VERSUS

F. B. WILLIAMS CYPRESS CO., LTD., et al., Defendant, Appellant;
Board of Commissioners of Atchafalaya Basin Levee District, In-
tervenor, Appellee; Schwing Lumber and Shingle Co., Ltd., In-
tervenor, Appellee

Appealed from the Nineteenth Judicial District Court, Parish of
Iberia, Hon. James Simon, Judge.

Motion for Rehearing.

Burke & Smith, F. E. Delahoussaye, Attorneys for Plaintiff and
Schwing Lumber and Shingle Co., Ltd.

Signed motion filed Mch. 9, 1920. (Sgd.) Paul E. Mortimer,
clerk.

167 1 Supreme Court of the State of Louisiana,

No. 23733.

ATCHAFALAYA LAND COMPANY, LIMITED (in Liquidation),

VERSUS

F. B. WILLIAMS CYPRESS COMPANY, LTD., et als.; Board of Com-
missioners of Atchafalaya Basin Levee District and Schwing Lum-
ber & Shingle Company, Limited, Interveners.

Motion for Rehearing.

167 2 To the Honorable the Chief Justice and Associate Justices
of the Supreme Court of the State of Louisiana:

Now comes the Atchafalaya Land Company, Limited, and averring
that it is seriously aggrieved and injured by the decision of this
Honorable Court in the above entitled and numbered cause, wherein
the Court maintains the plea of prescription and reverses the judg-
ment of the District Court, respectfully sets forth herein what it
conceives to be the errors in said opinion and decree.

Your Honors have correctly stated the status of the plaintiffs and
interveners in said suit, and properly declared that the Atchafalaya
Land Company, Limited, has, "with regards to the land in contest
whatever rights Wisner and Dresser would now have if they had not

disposed of the rights they acquired from the Board of Commissioners of the Levee District. With this recognition of the status of plaintiff as being substituted to Wisner and Dresser, we respectfully submit, with reference to the plea of prescription sustained by the Court, the following status:

By Act 97 of 1890 under Section 11, the State of Louisiana granted to the Board of Commissioners of the Atchafalaya Basin Levee District, all lands then belonging or that might thereafter belong to the State within the limits of the District. The language of the grant is as follows:

167. 3. "That in order to provide additional means to carry on the purposes of this act, and to furnish resources to enable said Board to assist in developing, establishing and completing a levee system in said District, all lands now belonging, or that may hereafter belong to the State of Louisiana, and embraced within the limits of the Levee District as herein constituted, shall be and the same are hereby given, granted, bargained, donated, conveyed and delivered unto said Board of Levee Commissioners of the Atchafalaya Basin Levee District, whether said lands or parts of lands originally granted by Congress of the United States to this State, or whether said lands have been, or may hereafter be forfeited to," etc.

The act contains other provisions or declarations unnecessary to recite here, and continues:

"After the expiration of said six months, it shall be the duty of the Auditor and Register of the State Land Office, on behalf of and in the name of the State, to convey to said Board of Levee Commissioners by proper instruments of conveyance, the lands hereby granted or intended to be granted and conveyed to said Board, whenever from time to time said Auditor and said Register of the State Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners, or by the President thereof, and thereafter said President of said Board shall cause said conveyances to be properly recorded in the Record's Office of the respective parishes wherein said lands are or may be located, and when

167. 4. said conveyances are so recorded the title to said land, with the possession thereof, shall, from thenceforth vest absolutely in said Board of Levee Commissioners, its successors or grantee; said lands shall be exempted from taxation after being conveyed to and while they remain in the possession or under the control of said Board. The said Board of Levee Commissioners shall have the power and authority, to sell, mortgage, pledge or otherwise dispose of said lands, in such manner and at such times and for such prices as to said Board shall seem proper, but all proceeds derived therefrom shall be deposited in the State Treasury to the credit of the Atchafalaya Basin Levee District, and shall be drawn out only upon the warrants of the President of said Board as provided in this act."

Under the authority granted to sell, the Board of Commissioners, in the year 1900, sold to Edward Wisner and J. M. Dresser

"All the lands donated, ceded and transferred by Act of the Legislature to the said party of the first part, to include all lands sold for taxes at this date, but as yet not deeded to the State, or to said party of the first part, but not to include lands hereafter accruing to the State at tax sale, or to said party of the first part otherwise than by tax sales already made, to include, in other words, only lands at this date owned by said party of the first part, or to which said party of the first part can at this date lay just claim, and also all lands heretofore sold at tax sale, but for which title has not been made to the State."

167 5 The deed further provided,

"That the party of the first part is to lend itself, with all its rights, powers and privileges and prerogatives to perfect its title, or the title required under the agreement to all lands to which it could have and the parties of the second part can now justly lay claim to, and to do so however requested by the said party of the second part; all proceedings, however, to be at the expense of the party of the second part."

There is then presented the situation under which the Levee Board sold all of the rights which it had acquired from the State so that a third person was substituted by contract for the original grantee. Twelve years after the Levee Board had exercised the right which the Statute gave it to sell the lands, and twelve years after Wisner and Dresser and their assignees had undertaken to exercise their rights under this sale from the Levee Board to Wisner and Dresser (which exercise of right consisted in buying at various times transferred to them lands originally granted to the Levee Board), the General Assembly by Act 62 of 1912, enacted as follows:

"That all suits or proceedings of the State of Louisiana, private corporations, partnerships or persons, to vacate and annul any patents issued by the State of Louisiana, duly signed by the Governor of the State and Register of the State Land Office, and of record in the State Land Office, or any transfer of property by any sub-

167 6 division of the State, shall be brought only within six years of the issuance of the patent, provided that suits to annul patents previously issued shall be brought within six years from the passage of this act."

F. B. Williams Cypress Company, Limited, claiming under a patent issued to it after the State of Louisiana had granted the lands to the Levee Board, is sued for the annulment of the patent and to have the rights of petitioner and the intervenors recognized under the status of affairs set out above. This defendant has urged the Act of 1912 as a bar to this action. This exception is alone made the

basis of the judgment of this Honorable Court, and is therefore alone the subject matter of discussion herein.

It was submitted to this Court by the pleadings and in brief, that the Act 62 of 1912 had no application to the present case, for the reason that the contract between the Levee Board and Wisner and Dresser gave an unlimited time in which to secure title to the lands transferred, just as the Levee Board had unlimited time in which to perfect or secure the title deed from the State; and that being an element or essential part of the contract, subsequent legislation, whether in the nature of changing remedies, or what not, could not affect, change or impair the obligation of this contract without an infringement against the prohibitions of the Constitution of the United States.

The process of reasoning upon which this Honorable Court bases its decree maintaining this statute of prescription as applicable to the instant case, and the decree itself, is adverse to and in violation of the first paragraph of Section 10 of Article 2 of the Constitution of the United States, and in violation of Section 1 of the fourteenth amendment.

It is well to take the propositions as announced by the Court and discuss them to the end of pointing out the errors thereof. Hence, there is quoted the following as the first proposition:

"The vested right which plaintiff's counsel contends would be divested if the statute of limitation should prevail in this case, is the right which the Board of Commissioners had, under Section 11 of the Act 97 of 1899, to demand and obtain from the State Auditor and Register of the Land Office, an instrument of Conveyance of the land now in controversy. In other words, the obligation of the contract, which plaintiff's counsel argue would be violated if the statute of limitation should prevail in this case, is the obligation incurred by the State, by the Act of the Legislature creating the Levee District to transfer to the Board of Commissioners the land now in controversy, viz:—"

The Court quotes the provision of the act already incorporated hereinabove, and continues:

"The Legislature did not in the Act creating the Levee District, put the time limit upon the right of the Board of Commissioners to demand instruments of conveyance of the lands conveyed 167 8 and intended to be conveyed by the statute. And it is well settled that, after the State was, by the act of the Legislature, obliged to transfer to the Board of Commissioners all lands within the Levee District, the officers of the Land Department did not have the authority to issue a patent to anyone else for land within the District. See *State ex rel. Board of Commissioners of Caddo Levee District vs. Grace, Register*, 145 L. R. 83 South 206, and the list of decisions there cited. But it is also well settled that the lands intended to be conveyed by the statute creating the Levee District remain under the control of the Legislature so long as an absolute and indefeasible right had not vested in any individual or private

corporation. In *State vs. Crosslake Fishing & Shooting Club supra*, and again in *State ex rel. Atchafalaya Basin Levee Board vs. Capdevielle*, Auditor, 142 La. 141, 76 South 327, it was held that the Legislature retained the power to revoke the donation made by the Statute creating the Levee District, as to any land for which an instrument of conveyance had not been issued to the Board of Commissioners. Far from revoking the donation or grant of any land, for which the Board of Commissioners might have demanded an instrument of conveyance, the Act 62 of 1912 allowed the Board six years in which to demand instruments of conveyance even of lands for which patents had been issued to other parties. The reason why the State did not, by the Act of the Legislature creating the Levee District, lose control over the land is that the Board of Commissioners of the District was thereby made a State agency, 167 9, "subject to the authority and control of the State Legislature."

It is respectfully submitted that this Honorable Court places in juxtaposition two decisions which are diametrically opposed one to the other, and the last decision reaffirming the established jurisprudence, a practical annulment of the first. And still they are urged as the basis of a conclusion sustaining the plea of prescription.

The *Crosslake* case was decided in 1909. The syllabus announces the proposition set out in that case, which is reported in the *Louisiana Reports*, 123 at page 208:

"Under Act No. 74, page 95 of 1892, and Act No. No. 160, page 62 of 1900, the grant of lands made by the State to the Board of Commissioners of the Caddo Levee District is not a grant in presenti, but is intended to vest in the grantee the disposable title only when proper instruments of conveyance, executed by the State Auditor and Register of the State Land Office, are recorded in the Parishes where the lands lie. Hence, a sale of such lands by the Board prior to the registry of such conveyance is void, and the party attempting to purchase is liable to eviction at the suit of the State."

That is a clear announcement of a proposition diametrically opposed to the position announced by the plaintiff, and if it had continued the jurisprudence of this State, the plaintiff would 167 10 be out of Court. In that case, Justice Provosty dissented.

Quoting from his opinion in the 40th Southern Reporter, beginning at page 895:

"The only serious question is as to whether the State did not, by operation of the statute itself, convey to the Levee Board an interest in the land such as the Levee Board on its part could convey. Differently from private persons, the State may by the mere expression of her will, convey title to her property, 26 Am. and Eng. Enc. of Law, 423 *Strother vs. Lucas*, 37 U. S. 110; 9 L. ed. 1137. Now the statute reads: 'That the lands shall be and are hereby conveyed and delivered.' It is not only that they 'shall be,' but that they 'are hereby.' They are not only granted but 'hereby conveyed and de-

livered.' If these words do not import a present conveyance and delivery, they import nothing."

The dissenting opinion discusses the creation of the Levee Board as a body authorized to receive and to give title, and proceeds:

"It created this Levee Board and endowed it with the faculty of receiving and holding property and making contracts with reference thereto. This Board so created was as fully qualified to receive by donation from the Legislature as any ordinary corporation or person. The fact, therefore, that this Board was the creature of the Legislature, and its mere agent, wholly subject to its control, does not detract one iota from its status as a body capable of receiving and holding property and making binding contracts with reference thereto. The question still continued to be, and is, whether or not a present interest was intended to be conveyed to the Board. If yea, then the Board has a right to make contracts with reference to the interests so conveyed. If nay, then the Board had in the property no interest with reference to which it could contract. I think the State is bound by the contract which the Levee Board made with reference to this property."

The principle announced in this dissenting opinion has become the fixed jurisprudence in this State. It has been adopted in decisions in which Justice Monroe, who had rendered the original opinion in the Crosslake case, was the organ of the Court in rendering other decisions based upon the principles announced by Justice Provosty, as will hereinafter be discussed. The last expression of the Court, which is entirely based upon the now accepted jurisprudence, is in the opinion of Justice O'Neill in the matter of the State ex rel. Board of Commissioners of Caddo Levee District et als. vs. Grace, reported in the 83 Southern Reporter at page 206.

In that case Mrs. Douglas obtained from the Register of the State Land Office a patent to land which had been included in a grant in identical language made by the State to the Caddo Levee District. The manner of perfecting title was precisely the same, as in the making the grant to the Atchafalaya Levee Board. In the Caddo case, as in the present case, there had been no certificate of instrument of conveyance of the land to the Levee Board. It sued to have the patent issued to Douglas annulled, and this Court annulled it. Here is the language of the Court:

"When the State had, by the statute creating the Caddo Levee District, agreed to transfer to the Board any and all lands within the District, the officers of the Land Department had no authority to issue a patent to anyone else for land within the District. Any land in the District, appearing vacant on the records of the Land Office was subject at all times to be claimed by the Board of Commissioners so long as the grant was not repealed by Legislative Act."

It is a remarkable coincidence that the Levee Board in the Caddo case, without having obtained any title deed, had sold the land to

third person upon the assumption that the land belonged to it by virtue of the original grant. This phase of the case is stated by the Court as follows:

"Assuming ownership of the land, the Board of Commissioners sold it to one James L. Gilliam, in January 1901, by warranty deed which was promptly recorded in the Conveyance Office of the Parish where the land is situated. H. H. Huckaby, who, with the Board of Commissioners is co-plaintiff or relator in this suit, holds title through mesne conveyances from James L. Gilliam."

167 13 The Court, with reference to this situation says, referring to adverse propositions:

"The distinction between the case before us, and the cases cited, is that the relators in this proceeding had an inceptive right, antedating the claim of Mrs. Douglas. It is true the Board of Commissioners of the Levee District should not have sold the land before obtaining an instrument of conveyance from the State Auditor or the Register of the Land Office, but that is a matter of no interest to Mrs. Douglas, because the Board of Commissioners, as well as their grantee, is a party plaintiff, or relator in this proceeding, and no exception was taken to the parties being joined as co-plaintiffs or co-relators."

The similarity of the facts in the Caddo case with the one under consideration, is remarkable. How could the Court have recognized the title of Huckaby to land which the Levee Board had sold his author, without having received the title deed from the State, unless it was upon the well-established principle repeatedly adopted by this Court, and setting at naught the Crosslake case, to the effect that the grant by the State to the Levee Board was a grant in present; or if we desired to call it an inchoate right, it was a right open for perfection and completion at the option of the parties in interest.

But there is a principle of law to the effect that whenever a statute has ben interpreted by the highest Court of the State and
167 14 contracts are based upon it, the interpretation becomes a part of the law as much as if it were written in the law.

It is fortunate that the contract between the State of Louisiana and the Board of Commissioners of the Atchafalaya Levee Board, and between that Board and Wisner and Dresser and the Atchafalaya Land Company, has been subject matter of interpretation by this Honorable Court and the interpretation is therefore written in the contract itself.

In the case of State ex rel. Atchafalaya Basin Levee Board vs. Capdevielle, the Levee Board filed a mandamus proceeding against the State Auditor and Register, seeking to have title made to certain lands included in the swamp land grant already quoted above. It was an interpretation of the provisions of Section 11 of Act 97 of 1890. The contention of the Register and Auditor was that the grant by the State had in effect been repealed by Act 215 of 1908. The Court says:

"Considering the remaining ground relied on by respondents, we do not find that Act 215 of 1908 has any application to land which has been granted by the State to its Levee Boards, save that it makes the same provision with regard to the sale of such lands to would-be purchasers as with regards to lands not so granted. It is said that the grant to relator did not vest title until supplemented by acts of conveyance to be executed by the Auditor and Register. It has, however, several times been held by this Court that such grants, 167 15 at least operate to withdraw the lands affected by them from the market. *McDade vs. Bossier Levee Board*, 109 La. 627; 33 South 628; *Hall vs. Levee Board*, 111 La. 913; 36 South 976; *Hartigan vs. Weaver*, 126 La. 192, 52 South 674. The Levee Boards are mere State agencies, and as between them and the State, the State is at liberty to cancel donations of land, made to them, whether acts of conveyance have been executed or not. But the donation to relator has not been cancelled and the unrevoked act in which it is contained, after declaring that: 'All lands, now belonging, or that may hereafter belong to the State of Louisiana, and embraced within the limits of the Levee District, as herein constituted, shall be, and the same hereby are, given, granted, bargained, donated, conveyed and delivered unto the said Board of Levee Commissioners'—and, after providing that a delay of six months shall be allowed for the redemption of lands which may have been acquired by the State at tax sales, further declares, that: 'After the expiration of said six months, it shall be the duty of the Auditor and the Register * * * to convey to said Board, by proper instruments of conveyance, the lands hereby granted or intended to be granted to said Board, whenever, from time to time, said Auditor and said Register * * * or either of them, shall be requested to do so by said Board * * * or by the President thereof, and, thereafter, said President shall cause said conveyances to be properly recorded in the respective parishes where said lands are or may be located, and, when said conveyances are so recorded, the title to the 167 16 said land, with the possession thereof, shall, from thenceforth, vest absolutely in said Board,' etc. It was therefore within the contemplation of the act that the donation should stand and remain open to acceptance and confirmation indefinitely, and the request which the Board now makes of the Auditor and Register is as well within the law as though it had been made immediately upon the expiration of the six months allowed the former owner and tax debtor within which to redeem."

It will be seen then, that what Wisner and Dresser bought from the Atchafalaya Levee Board was the right which the Levee Board had to the lands donated and the right to have title made at any time. Wisner and Dresser were substituted to all of the rights which the Levee Board had acquired and which it had the right to sell. Consequently, Wisner and Dresser acquired the right which the Court says was within the contemplation of the act, that the donation should stand and remain open for acceptance and confirmation in-

definitely, and that the request is as well within the law today as if it had been made at the inception of the contract.

It is worthy of note that this decision was rendered June 11th, 1917. It is well to stress the point that it was a decision interpreting the very contract now under consideration. But more than that, this contract received a further interpretation in the case of Atchafalaya

Land Company, Limited, vs. Grace, reported in the 143 La. 167-17 Reports, p. 637 and decided June 29, 1918. The Register of the Land Office had undertaken to sell under the provisions of Act 215 of 1908, lands within the Atchafalaya Basin, and Wisner and Dresser enjoined upon the ground that those lands were included in the grant made by the State to the Levee Board, and that they were included in the sale from the Levee Board to Wisner and Dresser. There was no transfer from the State to the Levee Board, and there was no transfer from the Levee Board to Wisner and Dresser; but the Atchafalaya Land Company representing Wisner and Dresser (as is recognized to its status by the Court in this case) enjoined the sale upon the ground that it had the right to have title made to these lands. The language of the decision is as follows:

"The contention on behalf of defendants is that pursuant to the donation declared by the Act of 1890, though the Board of Commissioners might demand a title to the tract in question, and though for valuable consideration, the Board, by two acts, respectively, promised to convey, and did convey, the tract in question to plaintiff's author, that plaintiff cannot exercise that right because by Act No. 215 of 1908, the General Assembly declared all applications for entry or purchase of public lands of the State, then on file, to be null, and *prescribed* a particular method whereby they should thereafter be sold. This Court has, several times, had occasion to consider the effect of the grants contained in Act No. 97 of 1890 and similar statutes, and of Act No. 215 of 1908, when construed together with, and has held the statute last mentioned to be inapplicable to claims for lands granted under those first mentioned, or under contracts with the grantee; that, in effect, the State had parted with the lands donated to the Levee Board; that they were not thereafter open to entry as public lands of the State; and that having been subjected to the disposition of the Levee Boards, and contracts made by these Boards with reference to them, could not be affected by subsequent legislation."

The Court refers to a number of authorities, and says that:

"The most recent case upon the subject is the State ex rel. Atchafalaya Basin Levee Board vs. Capdevielle, Auditor, 142 La. 111, 76 South, in which it was held, quoting from the syllabus, that 'Act No. 97 of 1890 contemplates that the donation of land to the Atchafalaya Basin Levee Board therein contained should stand open indefinitely for acceptance, and that the lands should be conveyed to the Board from time to time, as requested by it, and that the Act is unaffected by Act No. 215 of 1908; hence the request which the Board now makes of the State Auditor and Register of the State Land Office to

execute conveyances of the land so donated is as well within the law as it has ever been, and, as the ministerial duty rests upon those officers to comply with that request, mandamus will lie to compel such compliance." Applying that rule to the instant case, we can discover no appreciable difference between the position of the plaintiff herein standing in the place and exercising the rights of the Board of Commissioners (which by its contract it is expressly authorized to do) and the Board itself, if it were before the Court, instead of its transferee; and as the Board (as between it and defendants) would have the right to demand a title to the land in dispute, so its transferee has the right to protect the title acquired from the Board by staying defendants in their attempts to sell the land to a third person."

How is it possible for this Honorable Court to now hold that the right to perfect title at any time is not in the nature of a contract between the State and the assignee of the Levee Board.

The question is presented to the Court in an issue affecting this particular contract, in which the present plaintiff was the plaintiff, and a specific interpretation was placed upon the contract, stating that the Atchafalaya Land Company has the same right today to acquire title as the Levee Board had when the grant was originally made. We are, therefore, not left to the necessity of seeking parallel cases, but the specific issue has been definitely settled and we repeat the proposition that the interpretation of a law by the Court of highest authority, fixes that interpretation in the law as a part of it. This interpretation of this statute by the Supreme Court of this State, makes the interpretation a part of the contract which cannot be abrogated by any subsequent legislation.

Now with reference to the proposition that the Legislature has the right to revoke a grant made to a Levee Board, it is submitted that it is unnecessary to discuss it for the reason that the decision just quoted settled this specific issue; but that the correct principle of law is that the Legislature may revoke the grant to the Levee Board as long as the Levee Board has not exercised the authority which was given to it and sold the land to a third person. The Court evidently does not intend to suggest the proposition that after the State had authorized its grantee, the Levee Board, to sell the land, and the Levee Board in truth did sell the land, that a subsequent act can revoke the grant so as to affect the purchaser from the Levee Board. Of course, the Court bases this opinion upon the theory that there is no title in the Atchafalaya Land Company, or in Wisner and Dresser, until the deed be executed by the Auditor and Register of the Land Office. It is very respectfully submitted that the inconsistency of that position is made patent when we consider the case of *State ex rel. Board of Commissioners of Caddo Levee District vs. Grace*. The only manner in which title to the assignee of the Levee Board could be maintained as it was maintained, was upon the principle that the Levee Board being the grantee of the State, and having the right at any time to require title to be made, had the corresponding right to sell its title to a third person.

Referring to the proposition already announced, that the judicial decision construing a law is a part thereof, the Court is referred to the following authority: Enc. of U. S. Supreme Court Reporter, Vol. 6, p. 774:

"But the rule is well settled, that judicial decisions construing the Constitution or laws of the State are a part thereof, and a change of decision may have all the practical effect of the adoption of a new Constitutional provision, statute or ordinance; and if the last construction has the effect of impairing the obligation of a contract entered into while the prior decision was recorded as having established a law, the last decision must be disregarded in adjudicating the rights of the parties. *And this is true, although the first judicial construction of the statute upon which the contract, or the remedy for its enforcement is based, was not made until after the contract had been entered into.* (Italic type ours.) The doctrine applies as well to the construction of a provision of the organic law, as to the construction of a statute. The construction, so far as contract obligations incurred under it are concerned, constitutes a part of the law, as much as if embodied in it. And so far does this extend, that when a statute of two States expressed in the same terms, is construed differently by the highest Courts, they are treated as different laws, each embodying the particular construction of its own State, and enforced in accordance with it in all cases arising under it. And it seems that it is immaterial that the State decision by which it is claimed that the contract is impaired, is one of first impression in the State construing the law under which the contract was entered into.

Moreover, although the decision of the State Court is arrived at without any reference made to the act claimed to impair the contract obligation, yet if the necessary consequence of the judgment is that effect is thereby given to that act, and in a manner in which the complainant claims to be unwarranted and illegal, such decision will be held to infringe the contract clause of the Federal Constitution."

There are a large number of decisions referred to in the notes under this section, one of which under note 48, refers to the proposition that decisions entered into after a contract has been executed, but interpreting that contract, become a part of the contract.

The Court is referred to the notes and a list of authorities quoted, sustaining the proposition outlined above.

It is submitted then that the judicial interpretation of the act and the rights transferred by the Levee Board to Wisner and Dresser, being that these grantees had an indefinite time within which to require title to be made, any subsequent statute which says they shall have less time, is necessarily an impairment of the obligation of the contract.

It is remarkable that the Court in the instant case, while it argues on the one hand that the Act 62 of 1912 does not impair the obligation of the contract, says, on the other hand, that,

and it is well settled, that after the State was, by the Act
 167 23 of the Legislature, obligated to transfer to the Board of
 Commissioners all lands within the Levee District, the officers of the Land Department did not have authority to issue a patent to anyone else for land within the District."

It did not have that authority because the State had made an absolute grant of the land to the Levee Board with the authority to sell, and the Levee Board had sold to third parties.

It is worth repetition that there is no question but that the State would have had the right to revoke the grant before the Levee Board had sold the land to any other person; but no authority, whether of this State, or any other Court, will sustain the proposition that the State had the right to revoke the grant after the rights of the Levee Board had been vested in third persons.

The next proposition to which attention is directed is this. The Court says:

"There are two separate and distinct reasons why the interpretation of the Federal Constitution is not pertinent to this case. The first reason is that a statute creating a State agency and investing it with authority to dispose of public lands is not a contract within the meaning of the clause forbidding the enactment of laws impairing the obligations of contracts. The only legislative grants that are protected by the clause forbidding the enactment of laws impairing the obligation of contracts are grants made to or on behalf of
 167 24 individuals or private corporations, or grants on the faith of which and according to the terms of which an individual or private corporation has acquired title."

There is no doubt but that the statute creating the Atchafalaya Levee Board as a State agency, and granting it lands and authorizing it to sell lands, was not a contract in the sense that it could not be revoked by the State at its pleasure. But when the State created the agency with the authority to sell the land granted to it, and the agency sold the land, then arose the contract whose obligation could not be impaired, and that comes within the legislative grants which are protected by the clause forbidding the enactment of laws impairing the obligations of contracts, under the proposition announced by the Court.

It is respectfully submitted that the proposition is correctly stated from a legal standpoint, but incorrectly applied to the status of the case, inasmuch as it refers only to one part of the transaction, and not to the vital one, which is the transfer by the State agency to the individual citizen.

The Court says further:

"The other reason why the Constitutional inhibition against giving a statute a retroactive effect of impairing the obligation of a contract is not pertinent to this case, is that the statute of 1912, Act 62 of 1912, did not divest anyone of his vested rights, but, on the contrary, allowed a reasonable time for everyone to assert his right."

This Honorable Court had decided in the interpretation of the specific contract under consideration, and as quoted above, that the assignee was as much within his rights today to require title to be made, as he was at the origin of the grant. It decided that that was a part of the contract under the act, otherwise it could not have given judgments in the two cases amply quoted above. If that particular clause had not been a part of the contract, of course, no one could complain because of the enactment of the statute of repose. But where it does put a time limit to the exercise of a right arising from a contract, when that contract gave an unlimited time in which to exercise the right, it impairs the obligation of the contract. This is accentuated by the fact that the assignee of the Levee Board was under no obligation to pay taxes upon the property until he did acquire title. There was a purpose in this. The lands were wild, inaccessible, difficult of possession, and the Legislature taking notice of these conditions, proposed that until they be subjected to actual possession by the assignees of the Levee Board, they should be exempted of the burden of taxation. There was no time limit to that right, and it was at the option of the assignee when the conditions would arise to justify him in placing these lands upon the tax rolls by acquiring title thereto. That is a substantial right in the contract, and to say that it must be exercised in a time shorter than that fixed by the contract itself, is an invasion of the contractual right of the parties.

It necessarily follows that if the Court is in error in its view-point as to this proposition, the long list of authorities which it quotes sustaining the right of the Legislature to change statutes of limitations is inapplicable.

In the original brief we have repeatedly recognized the proposition that remedial laws may be passed changing the terms of prescription; but no law can be passed which changes the term of prescription when time for execution of a contract is fixed therein, so that any alteration of the statute of prescription would be an alteration of the obligations of the contract.

While it is evident that parties entering into a contract do so with the knowledge that the Legislature may change the remedy by which contracts are to be enforced, or may even change the prescriptive term within which parties may sue to enforce contract, it is evident that they also enter into contracts with the knowledge that if a term for the execution of the contract is written in the contract, or if it is a part of the contract, that one of the parties shall have an indefinite period to call upon the other to comply, no law can be enacted which changes the private law embodied in the contract between the parties. It is only when the contract is silent as to the remedy or as to the time of execution, that it is possible for the Legislature to prescribe by statute the manner or the time of the enforcement of contracts. Cooley Constitutional Limitation, 402 et seq.; Black's Constitutional Law, 2nd Edition, Sections 21, 2, 3, 284; Lawyers' Reports Annotated, Book 24, p. 284; Ruling Case Law Vol. 6, p. 308-10; 109 La. Rep. 710; 96 U. S. 595, Edwards vs. Kearzey; Green vs. Biddle, 8 Wheat 1; 31 A. 765; 32 A. 411.

In *Edwards vs. Cursey*, referred to above, the Court will find a review of the decisions of the United States Supreme Court upon the principles involved. Reference is, therefore, specially made to said case.

For all of the reasons hereinabove set forth, it is respectfully urged that the decision rendered in this case is erroneous and does injury to the rights of petitioner, appellee; and it is therefore moved that a rehearing be granted; and further, that there be judgment as originally prayed for;

And for general relief.

(Sgd.,)

BURKE & SMITH,

F. E. DELAHOUSSAYE,

Attorneys for Plaintiff and Appellee.

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(Motion for Rehearing.)

Supreme Court of the State of Louisiana.

No. 23733.

ATCHAFALAYA LAND COMPANY

vs.

F. B. WILLIAMS CYPRESS COMPANY et als.; BOARD OF COMMISSIONERS of Atchafalaya Basin Levee District & Schwing Lumber & Shingle Company, Interveners.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

Now come the Schwing Lumber & Shingle Company, Limited, intervenors, and the Board of Commissioners of the Atchafalaya Basin Levee District as intervenors, who complaining of the judgment entered herein as prejudicial to their rights, and adopting all of the reasons set forth in the motion for rehearing filed on behalf of the Atchafalaya Land Company, Limited, move this Honorable Court grant said rehearing, and further, pray that the judgment here rendered be set aside, and that judgment be rendered affirming the judgment of the District Court;

And for general relief.

(Signed)

BURKE & SMITH,

F. E. DELAHOUSSAYE,

For Schwing Lumber & Shingle Co.

(Signed)

J. H. MORRISON,

Atty for Board of Com. Atchafalaya

Basin Levee District.

(Endorsed:) No. 23733.—Supreme Court Louisiana.—Atchafalaya Land Co. vs. Williams Cypress Co.—Motion for rehearing—Filed Mch 10th, 1920.—(Signed) Paul E. Mortimer, clerk.

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(Motion for Rehearing.)

Supreme Court of the State of Louisiana.

No. 23733.

ATCHAFALAYA LAND CO., LTD. (in Liquidation), Plaintiff, Appellee,

VERSUS

F. B. WILLIAMS CYPRESS CO., LTD., et al., Defendant, Appellant;
Board of Commissioners of Atchafalaya Basin Levee District, In-
tervenor, Appellee; Schwing Lumber and Shingle Co., Ltd., In-
tervenor, Appellee.

Appealed from the Nineteenth Judicial District Court, Parish of
Iberia, Hon. James Simon, Judge.

Motion for Rehearing.

Burke & Smith, F. E. Delahoussaye, Attorneys for Plaintiff and
Schwing Lumber and Shingle Co., Ltd.

Filed Feb. 10, 1920. (Sgd.) Paul E. Mortimer, clerk.

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Supreme Court of the State of Louisiana.

No. 23733.

ATCHAFALAYA LAND COMPANY, LIMITED (in Liquidation),

VERSUS

F. B. WILLIAMS CYPRESS COMPANY, LTD., et als.; Board of Com-
missioners of Atchafalaya Basin Levee District and Schwing Lumber
& Shingle Company, Limited, Interveners.

Motion for Rehearing.

TO THE Honorable the Chief Justice and Associate Justices
of the Supreme Court of the State of Louisiana:

Now comes the Atchafalaya Land Company, Limited, and averring
that it is seriously aggrieved and injured by the decision of this
Honorable Court in the above entitled and numbered cause, wherein
the Court maintains the plea of prescription and reverses the judg-
ment of the District Court, respectfully sets forth herein what it
deceives to be the errors in said opinion and decree.

Your Honors have correctly stated the status of the plaintiffs and
intervenors in said suit, and properly declared that the Atchafalaya
and Company, Limited, has, "with regards to the land in contest

whatever rights Wisner and Dresser would now have if they had disposed of the rights they acquired from the Board of Commissioners of the Levee District." With this recognition of the status of the plaintiff as being substituted to Wisner and Dresser, we respectfully submit, with reference to the plea of prescription sustained by the Court, the following status:

By Act 97 of 1890 under Section 11, the State of Louisiana granted to the Board of Commissioners of the Atchafalaya Basin Levee District, all lands then belonging or that might thereafter belong to the State within the limits of the District. The language of the grant is as follows:

169-3 "That in order to provide additional means to carry out the purposes of this act, and to furnish resources to enable said Board to assist in developing, establishing and completing a levee system in said District, all lands now belonging, or that hereafter belong to the State of Louisiana, and embraced within the limits of the Levee District as herein constituted, shall be and the same are hereby given, granted, bargained, donated, conveyed, delivered unto said Board of Levee Commissioners of the Atchafalaya Basin Levee District, whether said lands or parts of lands originally granted by Congress of the United States to this State or whether said lands have been, or may hereafter be forfeited, etc.

The act contains other provisions or declarations unnecessary to recite here, and continues:

"After the expiration of said six months, it shall be the duty of the Auditor and Register of the State Land Office, on behalf of the State, to convey to said Board of Levee Commissioners by proper instruments of conveyance, the lands hereby granted or intended to be granted and conveyed to said Board, whether from time to time said Auditor and said Register of the State Land Office, or either of them, shall be requested to do so by the Board of Levee Commissioners, or by the President thereof, thereafter said President of said Board shall cause said conveyances to be properly recorded in the Record's Office of the respective parishes wherein said lands are or may be located, and

169-4 said conveyances are so recorded the title to said lands, and the possession thereof, shall, from thenceforth vest absolutely in said Board of Levee Commissioners, its successors or assigns; said lands shall be exempted from taxation after being conveyed to and while they remain in the possession or under the control of said Board. The said Board of Levee Commissioners shall have full power and authority, to sell, mortgage, pledge or otherwise dispose of said lands, in such manner and at such times and for such purposes as to said Board shall seem proper, but all proceeds derived from the sale of said lands shall be deposited in the State Treasury to the credit of the Atchafalaya Basin Levee District, and shall be drawn out only by the warrants of the President of said Board as provided in this

Under the authority granted to sell, the Board of Commissioners, in the year 1900, sold to Edward Wisner and J. M. Dresser

"All the lands donated, ceded and transferred by Act of the Legislature to the said party of the first part, to include all lands sold for taxes at this date, but as yet not deeded to the State, or to said party of the first part, but not to include lands hereafter accruing to the State at tax sale, or to said party of the first part otherwise than by tax sales already made, to include, in other words, only lands at this date owned by said party of the first part, or to which said party of the first part can at this date lay just claim, and also all lands heretofore sold at tax sale, but for which title has not been made to the State."

69 5 The deed further provided:

"That the party of the first part is to lend itself, with all its rights, powers and privileges and prerogatives to perfect its title, or the title required under the agreement to all lands to which it could have and the parties of the second part can now justly lay claim to, and to do so however requested by the said party of the second part; all proceedings, however, to be at the expense of the party of the second part."

There is then presented the situation under which the Levee Board sold all of the rights which it had acquired from the State so that a third person was substituted by contract for the original grantee. Twelve years after the Levee Board had exercised the right which the Statute gave it to sell the lands, and twelve years after Wisner and Dresser and their assignees had undertaken to exercise their rights under this sale from the Levee Board to Wisner and Dresser (which exercise of right consisted in having at various times transferred to them lands originally granted to the Levee Board), the General Assembly by Act 62 of 1912, enacted as follows:

"That all suits or proceedings of the State of Louisiana, private corporations, partnerships or persons, to vacate and annul any patents issued by the State of Louisiana, duly signed by the Governor of the State and Register of the State Land Office, and of record in the State Land Office, or any transfer of property by any subdivision of the State, shall be brought only within six years of the issuance of the patent, provided that suits to annul patents previously issued shall be brought within six years from the passage of this act."

69 6 F. B. Williams Cypress Company, Limited, claiming under a patent issued to it after the State of Louisiana had granted the lands to the Levee Board, is sued for the annulment of the patent and to have the rights of petitioner and the intervenors recognized under the status of affairs set out above. This defendant has urged the Act 62 of 1912 as a bar to this action. This exception is alone made the

basis of the judgment of this Honorable Court, and is therefore alone the subject matter of discussion herein.

It was submitted to this Court by the pleadings and in brief, that the Act 62 of 1912 had no application to the present case, for the reason that the contract between the Levee Board and Wisner and Dresser gave an unlimited time in which to secure title to the lands transferred, just as the Levee Board had unlimited time in which to perfect or secure the title deed from the State; and that being an element or essential part of the contract, subsequent legislation, whether in the nature of changing remedies, or what not, could not affect, change or impair the obligation of this contract without an infringement against the prohibitions of the Constitution of the United States.

The process of reasoning upon which this Honorable Court bases its decree maintaining this statute of prescription as applicable to the instant case, and the decree itself, is adverse to and in violation of the first paragraph of Section 10 of Article 2 of the Constitution of the United States, and in violation of Section 1 of the fourteenth amendment.

It is well to take the propositions as announced by the Court and discuss them to the end of pointing out the errors thereof. Hence, there is quoted the following as the first proposition:

"The vested right which plaintiff's counsel contends would be divested if the statute of limitation should prevail in this case, is the right which the Board of Commissioners had, under Section 11 of the Act 97 of 1890, to demand and obtain from the State Auditor and Register of the Land Office, an instrument of Conveyance of the land now in controversy. In other words, the obligation of the contract, which plaintiff's counsel argue would be violated if the statute of limitation should prevail in this case, is the obligation incurred by the State, by the Act of the Legislature creating the Levee District to transfer to the Board of Commissioners the land now in controversy, viz:—"

The Court quotes the provision of the act already incorporated hereinabove, and continues:

"The Legislature did not in the Act creating the Levee District put the time limit upon the right of the Board of Commissioners to demand instruments of conveyance of the lands conveyed 169 8 and intended to be conveyed by the Statute. And it is well settled that, after the State was, by the act of the Legislature, obliged to transfer to the Board of Commissioners all lands within the Levee District, the officers of the Land Department do not have the authority to issue a patent to anyone else for land within the District. See *State ex rel. Board of Commissioners of Caddo Levee District vs. Grace, Register*, 145 L. R. 83 South 296, and the list of decisions there cited. But it is also well settled that the lands intended to be conveyed by the statute creating the Levee District remain under the control of the Legislature so long as an absolute

and indefeasible right had not vested in any individual or private corporation. In *State vs. Crosslake Fishing & Shooting Club supra*, and again in *State ex rel. Atchafalaya Basin Levee Board vs. Capdevielle, Auditor*, 142 La. 111, 76 South 327, it was held that the Legislature retained the power to revoke the donation made by the State creating the Levee District, as to any land for which an instrument of conveyance had not been issued to the Board of Commissioners. Far from revoking the donation or grant of any land, for which the Board of Commissioners might have demanded an instrument of conveyance, the Act 62 of 1912 allowed the Board six years in which to demand instruments of conveyance even of lands for which patents had been issued to other parties. The reason why the State did not, by the Act of the Legislature creating the Levee District, lose control over the lands, is that the Board of Commissioners of the District was thereby made a State agency, 169 9 "subject to the authority and control of the State Legislature."

It is respectfully submitted that this Honorable Court places in juxtaposition two decisions which are diametrically opposed one to the other, and the last decision reaffirming the established jurisprudence, a practical annulment of the first. And still they are urged as the basis of a conclusion sustaining the plea of prescription.

The *Crosslake* case was decided in 1909. The syllabus announces the proposition set out in that case, which is reported in the *Louisiana Reports* 123 at page 208:

"Under Act No. 74, page 95 of 1892, and Act No. No. 160, page 62 of 1900, the grant of lands made by the State to the Board of Commissioners of the Caddo Levee District is not a grant in present, but is intended to vest in the grantee the disposable title only when proper instruments of conveyance, executed by the State Auditor and Register of the State Land Office, are recorded in the Parishes where the lands lie. Hence, a sale of such lands by the Board prior to the registry of such conveyance is void, and the party attempting to purchase is liable to eviction at the suit of the State."

That is a clear announcement of a proposition diametrically opposed to the position announced by the plaintiff, and if it had continued the jurisprudence of this State, the plaintiff would 169 10 be out of Court. In that case, Justice Provosty dissented.

Quoting from his opinion in the 40th Southern Reporter, beginning at page 895:

"The only serious question is as to whether the State did not, by operation of the statute itself, convey to the Levee Board an interest in the land such as the Levee Board on its part could convey. Differently from private persons, the State may by the mere expression of her will, convey title to her property. 26 Am. and Eng. Enc. of Law, 423 *Strother vs. Lucas*, 37 U. S. 410; 9 L. ed. 1137. Now the statute reads: 'That the lands shall be and are hereby conveyed and delivered.' It is not only that they 'shall be,' but that they 'are

herby." They are not only granted but thereby conveyed and delivered." If these words do not import a present conveyance and delivery, they import nothing."

The dissenting opinion discusses the creation of the Levee Board as a body authorized to receive and to give title, and proceeds:

"It created this Levee Board and endowed it with the faculty of receiving and holding property and making contracts with reference thereto. This Board so created was as fully qualified to receive by donation from the Legislature as any ordinary corporation or person. The fact, therefore, that this Board was the creature of the Legislature, and its mere agent, wholly subject to its control, does not detract one iota from its status as a body capable of receiving and holding property and making binding contracts with reference thereto. The question still continued to be, and is, whether or not a present interest was intended to be conveyed to the Board. If yes, then the Board has a right to make contracts with reference to the interests so conveyed. If may, then the Board had in the property no interest with reference to which it could contract. I think the State is bound by the contract which the Levee Board made with reference to this property."

The principle announced in this dissenting opinion has become the fixed jurisprudence in this State. It has been adopted in decisions in which Justice Monroe, who had rendered the original opinion in the Crosslake case, was the organ of the Court in rendering other decisions based upon the principles announced by Justice Provosty, as will hereinafter be discussed. The last expression of the Court, which is entirely based upon the now accepted jurisprudence, is in the opinion of Justice O'Neill in the matter of the State ex rel. Board of Commissioners of Caddo Levee District et als. vs. Grace, reported in the 83 Southern Reporter at page 206.

In that case Mrs. Douglas obtained from the Register of the State Land Office a patent to land which had been included in a grant in identical language made by the State to the Caddo Levee District. The manner of perfecting title was precisely the same, as in the act making the grant to the Atchafalaya Levee Board. In the Caddo case, as in the present case, there had been no certificate or instrument of conveyance of the land to the Levee Board.

It sued to have the patent issued to Douglas annulled, and this Court annulled it. Here is the language of the Court:

"When the State had, by the statute creating the Caddo Levee District, agreed to transfer to the Board any and all lands within the District, the officers of the Land Department had no authority to issue a patent to anyone else for land within the District. Any land in the District, appearing vacant on the records of the Land Office, was subject at all times to be claimed by the Board of Commissioners so long as the grant was not repealed by Legislature Act."

It is a remarkable coincidence that the Levee Board in the Caddo case, without having obtained any title deed, had sold the land to a third person upon the assumption that the land belonged to it by virtue of the original grant. This phase of the case is stated by the Court as follows:

"Assuming ownership of the land, the Board of Commissioners sold it to one James L. Gilliam, in January 1901, by warranty deed which was promptly recorded in the Conveyance Office of the Parish where the land is situated. H. H. Huckaby, who, with the Board of Commissioners is co-plaintiff or relator in this suit, holds title through mesne conveyances from James L. Gilliam."

169 13 The Court, with reference to this situation, says, referring to adverse propositions:

"The distinction between the case before us, and the cases cited, is that the relators in this proceeding had an inceptive right, antedating the claim of Mrs. Douglas. It is true the Board of Commissioners of the Levee District should not have sold the land before obtaining an instrument of conveyance from the State Auditor or the Register of the Land Office, but that is a matter of no interest to Mrs. Douglas, because the Board of Commissioners, as well as their grantee, is party plaintiff, or relator in this proceeding; and no exception was taken to the parties being joined as co-plaintiffs or co-relators."

The similarity of the facts in the Caddo case with the one under consideration, is remarkable. How could the Court have recognized the title of Huckaby to land which the Levee Board had sold his author, without having received the title deed from the State, unless it was upon the well-established principle repeatedly adopted by this Court, and setting at naught the Crosslake case, to the effect that the grant by the State to the Levee Board was a grant in presenti; or if we desired to call it an inchoate right, it was a right open for perfection and completion at the option of the parties in interest.

But there is a principle of law to the effect that whenever a statute has been interpreted by the highest Court of the State and
169 14 contracts are based upon it, the interpretation becomes a part of the law as much as if it were written in the law.

It is fortunate that the contract between the State of Louisiana and the Board of Commissioners of the Atchafalaya Levee Board, and between that Board and Wisner and Dresser and the Atchafalaya Land Company, has been subject matter of interpretation by this Honorable Court and the interpretation is therefore written in the contract itself.

In the case of State ex rel. Atchafalaya Basin Levee Board vs. Capdevielle, the Levee Board filed a mandamus proceeding against the State Auditor and Register, seeking to have title made to certain lands included in the swamp land grant already quoted above. It was an interpretation of the provisions of Section 11 of Act 97 of

1890. The contention of the Register and Auditor was that the grant by the State had in effect been repealed by Act 215 of 1908. The Court says:

"Considering the remaining ground relied on by respondents, we do not find that Act 215 of 1908 has any application to land which has been granted by the State to its Levee Boards, save that it makes the same provision with regard to the sale of such lands to would-be purchasers as with regards to lands not so granted. It is said that the grant to relator did not vest title until supplemented by acts of conveyance to be executed by the Auditor and Register. It has, however, several times been held by this Court that such grants, 169 15 at least operate to withdraw the lands affected by them from the market. *McDade vs. Bossier Levee Board*, 109 La. 627; 33 South 628; *Hall vs. Levee Board*, 111 La. 913; 36 South 976; *Hartigan vs. Weaver*, 126 La. 492, 52 South 674. The Levee Boards are mere State agencies, and as between them and the State, the State is at liberty to cancel donations of land, made to them, whether acts of conveyance have been executed or not. But the donation to relator has not been cancelled and the unrepealed act in which it is contained, after declaring that: 'All lands, now belonging, or that may hereafter belong to the State of Louisiana, and embraced within the limits of the Levee District, as herein constituted, shall be, and the same hereby are, given, granted, bargained, donated, conveyed and delivered unto the said Board of Levee Commissioners'—and, after providing that a delay of six months shall be allowed for the redemption of lands which may have been acquired by the State at tax sales, further declares, that: 'After the expiration of said six months, it shall be the duty of the Auditor and the Register * * * to convey to said Board, by proper instruments of conveyance, the lands hereby granted or intended to be granted to said Board, whenever, from time to time, said Auditor and said Register * * * or either of them, shall be requested to do so by said Board * * * or by the President thereof, and, thereafter, said President shall cause said conveyances to be properly recorded in the respective parishes where said lands are or may be located, and, when said conveyances are so recorded, the title to the 169 16 said land, with the possession thereof, shall, from thenceforth, vest absolutely in said Board,' etc. It was therefore within the contemplation of the act that the donation should stand and remain open to acceptance and confirmation indefinitely, and the request which the Board now makes of the Auditor and Register is as well within the law as though it had been made immediately upon the expiration of the six months allowed the former owner and tax debtor within which to redeem."

It will be seen then, that what Wisner and Dresser bought from the Atchafalaya Levee Board was the right which the Levee Board had to the lands donated and the right to have title made at any time. Wisner and Dresser were substituted to all of the rights which the Levee Board had acquired and which it had the right to sell.

Consequently, Wisner and Dresser acquired the right which the Court says was within the contemplation of the act, that the donation should stand and remain open for acceptance and confirmation indefinitely, and that the request is as well within the law today as if it had been made at the inception of the contract.

It is worthy of note that this decision was rendered June 11th, 1917. It is well to stress the point that it was a decision interpreting the very contract now under consideration. But more than that, this contract received a further interpretation in the case of Atchafalaya

Land Company, Limited, vs. Grace, reported in the 143 La. 169 17 Reports, p. 637 and decided June 29, 1918. The Register

of the Land Office had undertaken to sell under the provisions of Act 215 of 1908, lands within the Atchafalaya Basin, and Wisner and Dresser enjoined upon the ground that those lands were included in the grant made by the State to the Levee Board, and that they were included in the sale from the Levee Board to Wisner and Dresser. There was no transfer from the State to the Levee Board, and there was no transfer from the Levee Board to Wisner and Dresser; but the Atchafalaya Land Company representing Wisner and Dresser (as is recognized to its status by the Court in this case) enjoined the sale upon the ground that it had the right to have title made to these lands. The language of the decision is as follows:

"The contention on behalf of defendants is that pursuant to the donation declared by the Act of 1890, though the Board of Commissioners might demand a title to the tract in question, and though for valuable consideration, the Board, by two acts, respectively, promised to convey, and did convey, the tract in question to plaintiff's author, that plaintiff cannot exercise that right because by Act No. 215 of 1908, the General Assembly declared all applications for entry or purchase of public lands of the State, then on file, to be null, and proscribed a particular method whereby they should thereafter be sold. This Court has, several times, had occasion to consider the effect of the grants contained in Act No. 97 of 1890 and similar statutes, and of Act No. 215 of 1908, when construed there-

169 18 with, and has held the statute last mentioned to be inapplicable to claims for lands granted under those first mentioned, or under contracts with the grantee; that, in effect, the State had parted with the lands donated to the Levee Board; that they were not thereafter open to entry as public lands of the State; and that having been subjected to the disposition of the Levee Boards, and contracts made by these Boards with reference to them, could not be affected by subsequent legislation."

The Court refers to a number of authorities, and says that:

"The most recent case upon the subject is the State ex rel. Atchafalaya Basin Levee Board vs. Capdevielle, Auditor, 142 La. 111, 76 South, in which it was held, quoting from the syllabus, that 'Act No. 97 of 1890 contemplates that the donation of land to the Atchafalaya Basin Levee Board therein contained should stand open indefinitely

for acceptance, and that the lands should be conveyed to the Board from time to time, as requested by it, and that the Act is unaffected by Act No. 215 of 1908; hence the request which the Board now makes of the State Auditor and Register of the State Land Office to execute conveyances of the land so donated is as well within the law as it has ever been, and, as the ministerial duty rests upon those officers to comply with that request, mandamus will lie to compel such compliance.' Applying that rule to the instant case, we can dis-

cover no appreciable difference between the position of the plaintiff herein standing in the place and exercising the rights of the Board of Commissioners (which by its contract it is expressly authorized to do) and the Board itself, if it were before the Court, instead of its transferee; and as the Board (as between it and defendants) would have the right to demand a title to the land in dispute, so its transferee has the right to protect the title acquired from the Board by staying defendants in their attempts to sell the land to a third person."

How is it possible for this Honorable Court to now hold that the right to perfect title at any time is not in the nature of a contract between the State and the assignee of the Levee Board.

The question is presented to the Court in an issue affecting this particular contract, in which the present plaintiff was the plaintiff, and a specific interpretation was placed upon the contract, stating that the Atchafalaya Land Company has the same right today to acquire title as the Levee Board had when the grant was originally made. We are, therefore, not left to the necessity of seeking parallel cases, but the specific issue has been definitely settled and we repeat the proposition that the interpretation of a law by the Court of highest authority, fixes that interpretation in the law as a part of it. This interpretation of this statute by the Supreme Court of this State, makes the interpretation a part of the contract which cannot be abrogated by any subsequent legislation.

Now with reference to the proposition that the Legislature has the right to revoke a grant made to a Levee Board, it is submitted that it is unnecessary to discuss it for the reason that the decision just quoted settled this specific issue; but that the correct principle of law is that the Legislature may revoke the grant to the Levee Board as long as the Levee Board has not exercised the authority which was given to it and sold the land to a third person. The Court evidently does not intend to suggest the proposition that after the State had authorized its grantee, the Levee Board, to sell the land, and the Levee Board in truth did sell the land, that a subsequent act can revoke the grant so as to affect the purchaser from the Levee Board. Of course, the Court bases this opinion upon the theory that there is no title in the Atchafalaya Land Company, or in Wisner and Dresser, until the deed be executed by the Auditor and Register of the Land Office. It is very respectfully submitted that the inconsistency of that position is made patent when we consider the case of *State ex rel. Board of Commissioners of Caddo Levee District vs. Grace*. The only manner in which title to the assignee of

the Levee Board could be maintained as it was maintained, was upon the principle that the Levee Board being the grantee of the State, and having the right at any time to require title to be made, had the corresponding right to sell its title to a third person.

Referring to the proposition already announced, that the judicial decision construing a law is a part thereof, the Court is referred to the following authority: Enc. of U. S. Supreme Court Reporter, Vol. 6, p. 774:

“But the rule is well settled, that judicial decisions construing the Constitution or laws of the State are a part thereof, and a change of decision may have all the practical effect of the adoption of a new Constitutional provision, statute or ordinance; and if the last construction has the effect of impairing the obligation of a contract entered into while the prior decision was recorded as having established a law, the last decision must be disregarded in adjudicating the rights of the parties. *And this is true, although the first judicial construction of the statute upon which the contract, or the remedy for its enforcement is based, was not made until after the contract had been entered into.* (Italic type ours.) The doctrine applies as well to the construction of a provision of the organic law, as to the construction of a statute. The construction, so far as contract obligations incurred under it are concerned, constitutes a part of the law, as much as if embodied in it. And so far does this extend, that when a statute of two States expressed in the same terms, is construed differently by the highest Courts, they are treated as different laws, each embodying the particular construction of its own State, and enforced in accordance with it in all cases arising under it. And it seems that it is immaterial that the State decision by which it is claimed that the contract is impaired, is one of first impression in the State construing the law under which the contract was entered into, 169 22 Moreover, although the decision of the State Court is arrived at without any reference made to the act claimed to impair the contract obligation, yet if the necessary consequence of the judgment is that effect is thereby given to that act, and in a manner in which the complainant claims to be unwarranted and illegal, such decision will be held to infringe the contract clause of the Federal Constitution.”

There are a large number of decisions referred to in the notes under this section, one of which under note 48, refers to the proposition that decisions entered into after a contract has been executed, but interpreting that contract, become a part of the contract.

The Court is referred to the notes and a list of authorities quoted, sustaining the proposition outlined above.

It is submitted then that the judicial interpretation of the act and the rights transferred by the Levee Board to Wisner and Dresser, being that these grantees had an indefinite time within which to require title to be made, any subsequent statute which says they shall have less time, is necessarily an impairment of the obligation of the contract.

It is remarkable that the Court in the instant case, while it argues on the one hand that the Act 62 of 1912 does not impair the obligation of the contract, says, on the other hand, that,

169 23 "and it is well settled, that, after the State was, by the Act of the Legislature, obligated to transfer to the Board of Commissioners all lands within the Levee District, the officers of the Land Department did not have authority to issue a patent to anyone else for land within the District."

It did not have that authority because the State had made an absolute grant of the land to the Levee Board with the authority to sell, and the Levee Board had sold to third parties.

It is worth repetition that there is no question but that the State would have had the right to revoke the grant before the Levee Board had sold the land to any other person; but no authority, whether of this State, or any other Court, will sustain the proposition that the State had the right to revoke the grant after the rights of the Levee Board had been vested in third persons.

The next proposition to which attention is directed is this. The Court says:

"There are two separate and distinct reasons why the interpretation of the Federal Constitution is not pertinent to this case. The first reason is that a statute creating a State agency and investing it with authority to dispose of public lands is not a contract within the meaning of the clause forbidding the enactment of laws impairing the obligations of contracts. The only legislative grants that are protected by the clause forbidding the enactment of laws impairing the obligation of contracts are grants made to or on behalf of
169 24 individuals or private corporations, or grants on the faith of which and according to the terms of which an individual or private corporation has acquired title."

There is no doubt but that the statute creating the Atchafalaya Levee Board as a State agency, and granting it lands and authorizing it to sell lands, was not a contract in the sense that it could not be revoked by the State at its pleasure. But when the State created the agency with the authority to sell the land granted to it, and the agency sold the land, then arose the contract whose obligation could not be impaired, and that comes within the legislative grants which are protected by the clause forbidding the enactment of laws impairing the obligations of contracts, under the proposition announced by the Court.

It is respectfully submitted that the proposition is correctly stated from a legal standpoint, but incorrectly applied to the status of the case, inasmuch as it refers only to one part of the transaction, and not to the vital one, which is the transfer by the State agency to the individual citizen.

The Court says further:

"The other reason why the Constitutional inhibition against giving a statute a retroactive effect of impairing the obligation of a contract is not pertinent to this case, is that the statute of repose, Act 62 of 1912, did not divest anyone of his vested rights, but, on the contrary, allowed a reasonable time for everyone to assert his right."

This Honorable Court had decided in the interpretation of the specific contract under consideration, and as quoted above, that the assignee was as much within his rights today to require title to be made, as he was at the origin of the grant. It decide that that was a part of the contract under the act, otherwise it could not have given judgments in the two cases amply quoted above. If that particular clause had not been a part of the contract, of course, no one could complain because of the enactment of the statute of repose. But where it does put a time limit to the exercise of a right arising from a contract, when that contract gave an unlimited time in which to exercise the right, it impairs the obligation of the contract. This is accentuated by the fact that the assignee of the Levee Board was under no obligation to pay taxes upon the property until he did acquire title. There was a purpose in this. The lands were wild, inaccessible, difficult of possession, and the Legislature taking notice of these conditions, proposed that until they be subjected to actual possession by the assignees of the Levee Board, they should be exempted of the burden of taxation. There was no time limit to that right, and it was at the option of the assignee when the conditions would arise to justify him in placing these lands upon the tax rolls by acquiring title thereto. That is a substantial right in the contract, and to say that it must be exercised in a time shorter than that fixed by the contract itself, is an invasion of the contractual right of the parties.

It necessarily follows that if the Court is in error in its view-point as to this proposition, the long list of authorities which it quotes sustaining the right of the Legislature to change statutes of limitations is inapplicable.

In the original brief we have repeatedly recognized the proposition that remedial laws may be passed changing the terms of prescription; but no law can be passed which changes the term of prescription when time for execution of a contract is fixed therein, so that any alteration of the statute of prescription would be an alteration of the obligations of the contract.

While it is evident that parties entering into a contract do so with the knowledge that the Legislature may change the remedy by which contracts are to be enforced, or may even change the prescriptive term within which parties may sue to enforce contract, it is evident that they also enter into contracts with the knowledge that if a term for the execution of the contract is written in the contract, or if it is a part of the contract, that one of the parties shall have an indefinite period to call upon the other to comply, no law can be enacted which

changes the private law embodied in the contract between the parties. It is only when the contract is silent as to the remedy or as to the time of execution, that it is possible for the Legislature to prescribe by statute the manner or the time of the enforcement of contracts. Cooley Constitutional Limitation, 102 et seq.; Black's Constitutional Law, 2nd Edition, Sections 21, 2, 3, 284; Lawyers Reports Annotated, Book 21, p. 284; Ruling Case Law Vol. 6, p. 308-10; 109 La. Rep. 710; 96 U. S. 595, Edwards vs. Kearzey; Green vs. Biddle, 8 Wheat 1; 31 A. 765; 32 A. 411.

In Edwards vs. Cursey, referred to above, the Court will find a review of the decisions of the United States Supreme Court upon the principles involved. Reference is, therefore, specially made to said case.

For all of the reasons hereinabove set forth, it is respectfully urged that the decision rendered in this case is erroneous and does injury to the rights of petitioner, appellee; and it is therefore moved that a rehearing be granted; and further, that there be judgment as originally prayed for;

And for general relief.

(Sgd.)

BURKE & SMITH,

F. E. DEALHOUSSE, JR.

Attorneys for Plaintiff and Appellee.

170

(Rehearing Refused.)

(Extract from Minutes.)

New Orleans,

Monday, April 5th, 1920.

The Court was duly opened, pursuant to adjournment. Present—Their Honors: Frank A. Monroe, Chief Justice. And Walter B. Sommerville, Charles A. O'Niell and Ben C. Dawkins, Associate Justices. Absent—Olivier O. Provosty, Associate Justice.

No. 23733.

ATCHAFALAYA LAND COMPANY, LTD., in Liquidation,

vs.

F. B. WILLIAMS CYPRESS COMPANY, LTD., et als.

It is ordered that the rehearing applied for in this case be refused.

171 UNITED STATES OF AMERICA,

State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify *that* the foregoing 170 pages to be, first

a true and correct copy of the proceedings had in the 19th Judicial District Court, in and for the Parish of Iberia, in a certain suit wherein Atchafalaya Land Company, Limited, in Liquidation, was plaintiff, and F. B. Williams Cypress Company, Limited, et al., were defendants, Board of Commissioners of the Atchafalaya Basin Levee District, was Intervenor No. 1, and Schwing Lumber & Shingle Co. Ltd., was Intervenor No. 2, as filed in my office on the 26th day of August, 1919; and, secondly: a true copy of certain of the proceedings had in this, the Supreme Court of Louisiana on the appeal taken by the said defendants and appellants, which appeal is now on the docket of this court under the number 23,733 (all as per agreement of counsel, to be found at page 191 of this record).

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 7th day of July, Anno Domini, one thousand, nine hundred and twenty.

[Seal of Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

172 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Frank A. Monroe, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 7th day of July, Anno Domini, one thousand, nine hundred and twenty.

[Seal of Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice Supreme Court of Louisiana.

173 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the Honorable Frank A. Monroe is the Chief Justice of said Court and that his signature to the foregoing certificate is genuine.

In witness whereof, I hereunto set my hand and the seal of the Court aforesaid, at the city of New Orleans, this the 7th day of July, Anno Domini, one thousand, nine hundred and twenty.

[Seal of Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,

Clerk Supreme Court of Louisiana.

174

(Original Petition for Writ of Error.)

Supreme Court, State of Louisiana.

No. 23733.

ATCHAFALAYA LAND COMPANY, LIMITED,

VERSUS

F. B. WILLIAMS CYPRESS COMPANY, LIMITED; SCHWING LUMBER & Shingle Company, Limited, Intervenor; Board of Commissioners of the Atchafalaya Basin Levee District, Intervenor.

To the Honorable Frank A. Monroe, Chief Justice of the Supreme Court, State of Louisiana:

And now come The Atchafalaya Land Company, Limited, Plaintiff and Appellee; The Schwing Lumber & Shingle Company, Limited, Intervenor-Appellee, and the Board of Commissioners of the Atchafalaya Basin Levee District, Intervenor-Appellee, and who joining as Plaintiff in error, represent;

That on the 1st day of March, 1920, a judgment was entered by the Supreme Court of the State of Louisiana, the highest Court in the State having jurisdiction of said cause, annulling a judgment of the Nineteenth Judicial District Court in and for Iberia Parish, which judgment of the District Court had been in favor of the Plaintiff and of the Atchafalaya Land Company, Limited, claiming rights as to certain swamp lands and asking the annulling of certain patents under which the F. B. Williams Cypress Company, Limited, claimed title to the lands so that title might be made to it; and in favor of the Schwing Lumber and Shingle Company, Limited, Intervenor, claiming certain timber rights to the lands; and in favor of the Board of Commissioners of the Atchafalaya Basin Levee District, Intervenor, joining the plaintiff to vindicate title in the Atchafalaya Land Company, Limited, emanating from said Intervenor.

175 That a motion for rehearing was duly and timely made, and was refused on the fifth day of April, 1920, the said judgment becoming final on said date.

That this is an action to annul twelve patents to certain swamp lands issued to Pharr and Williams, (from whom defendant—F. B. Williams Cypress Company, Limited, derived title), and to have the

lands decreed subject to transfer by the State of Louisiana through its designated Agents, the Auditor of the State and the Register of the State Land Office, to the Board of Commissioners of the Atchafalaya Basin Levee District; and further subject to transfer by this Board of Commissioners to the Atchafalaya Land Company, Limited, under contractual relations existing between the State, the Board of Commissioners and the Atchafalaya Land Company, Limited.

That these relations arose in the manner following: The Congress of the United States by acts known as the Swamp Land Grants of 1849 and 1850 donated all the swamp and overflowed lands to Louisiana; and under said grants and the regulations affecting the transfer the lands in question were approved and certified to the State of Louisiana.

The State by Act 97 of the General Assembly of 1890 created the Board of Commissioners of the Atchafalaya Basin Levee District—constituted the same a corporate body; and assigned to it by the words “are hereby given, granted, bargained, donated, conveyed and delivered—” all the swamp lands received by Congressional grant,—with authority to sell or otherwise dispose of the same; and providing in the language of said grant that “it shall be the duty of the Auditor and Register of the State Land Office, on behalf of and in the name of the State, to convey to said Board of Commissioners, by proper instruments of conveyance, the lands herein granted or intended to be granted and conveyed to said Board, whenever from time to time said Auditor and Register of the State Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners, or by the President thereof, and thereafter

176 said President of said Board shall cause said conveyances to be properly recorded in the Recorder's Office of the respective Parishes wherein said lands are or may be located, and when said conveyances are so recorded the title to said lands with the possession thereof shall from thenceforth vest absolutely in said Board of Levee Commissioners, its successors or grantees,” etc.

The Board of Commissioners, in pursuance of the authority vested in it, sold to Edward Wisner and John M. Dresser, all the lands which it received in grant from the State and bound itself “to lend itself, with all its rights, powers and privileges and prerogatives to perfect its title, or the title acquired under this agreement to all lands to which it could have, and Wisner and Dresser can now justly lay claim to, and to do so whenever so requested,” etc.

The Atchafalaya Land Company, Limited, has become the assignee or representative of the Wisner and Dresser rights, and claims to be entitled to require title deed to be made to it, at its option, in the manner provided by the legislative grant,—and The Schwing Lumber and Shingle Company, Limited, has acquired the right to the timber on the land, and likewise to that extent claims to be entitled to call for title deed. The Board of Commissioners having bound itself to do what was necessary to secure a transfer from the State to it, and in turn to make deed to Wisner and Dresser, or its assigns, unites with the plaintiff and first intervenor, Schwing Lum-

ber and Shingle Company, Limited, to seek the relief desired, which includes the prayer for the cancellation of the patents issued to Pharr and Williams, and the recognition of title in Plaintiff and Intervenor as herein set forth.

The plaintiffs in error further declare that their claims and contentions were met by various defences, one of which was the plea of prescription of six years under the provisions of Act 62 of the General Assembly of the State of Louisiana for the year 1912, page 73, which is in the language following:

Be it further enacted, etc., "That all suits or proceedings of the State of Louisiana, private corporations, partnerships or persons, to vacate and annul any patent issued by the State of Louisiana, 177 duly signed by the Governor of the State and Register of the State Land Office, and of record in the State Land Office, or any transfer of property by any subdivision of the State, shall be brought only within six years of the issuance of the patent, provided that suits to annul patents previously issued, shall be brought within six years from the passage of this act."

Upon the filing of said plea of prescription of six years, the petitioner and intervenor named above by supplemental pleadings raised the issues that said statute, if applied to the issues in the cause, would be violative of the Constitution of the United States, said plea being in the language following: "It avers that under the terms of the grant of the State of Louisiana to the Board of Commissioners of the Atchafalaya Basin Levee District, the said grantee and its assignees were given the right to perfect title which was vested in the said Board by a grant presented upon the demand of the President of said Board of Commissioners or the assignees of the said Board, being part and parcel of the said contract that the right to demand the perfection of title was in said Board, or its assignees, to be exercised at any time, and that the said right, being part of the obligation, cannot be denied or withdrawn from said Board or its assignees, the possession of said lands by the State until the execution of said deeds at the option of the said Commissioners or their assignees, being for the benefit of the parties having the right to said lands; that it is of the essence of the grant by the State to the Board of Commissioners of the Atchafalaya Basin Levee District, and the said Board of Commissioners to Wisner and Dresser, that there should be no time limit against the rights of the said parties and their assignees to require deed to issue for said lands; and that the plaintiff in the present cause have a right to assert their title to the lands, such as they are, with the reservation of the right necessarily implied under the contract to require of the Auditor and Register of the State Land Office the issuance of proper deeds of conveyances at the pleasure of the plaintiffs, and that it has the right to protect the property, in its present status, from depredation and adverse claims and parties."

178 contentions in order that it may in due time exercise the right which is vested in it to demand execution of the said deed.

That the provisions of Act 62 of the General Assembly of 1912 insofar as it could be pretended they affect the contracts set forth above, are absolutely null and void and against the provisions

the Federal Constitution, in that the said act, if applied to the contracts set forth above and in the original petition, would deprive the petitioner of vested rights, without due process of law, and would impair the obligations of the contract entered into between the State of Louisiana and the Board of Commissioners of the Atchafalaya Basin Levee District, and the said Board of Commissioners and Wisner and Dresser and their assignees as set forth above and in the original petition."

That the Supreme Court of Louisiana found that plaintiff stood in the place and stead of Wisner and Dresser, the original assignees of the Board of Commissioners of the Atchafalaya Basin Levee District, in the following conclusion of its consideration of that issue, to-wit:

"We shall, therefore, regard the plaintiff as having with regard to the land in contest, whatever rights Wisner and Dresser would now have if they had not disposed of the rights they acquired from the Board of Commissioners of the Levee District."

That the fact was urged upon the Supreme Court that the Act 62 of 1912 was enacted after the contract had been executed between the Board of Commissioners of the Atchafalaya Basin Levee District and Wisner and Dresser.

That the further fact was urged that the Supreme Court of Louisiana had twice interpreted this specific contract, the said interpretations becoming necessarily part of the contract between the parties, and for which reason the same are specifically referred to.

That the said interpretations of the contract were upon a point similar to that now at issue, to-wit: the effect of an act subsequent to the grant by the State to the Board of Commissioners of the land, upon the contract between the said Board of Commissioners and Wisner and Dresser.

179 These decisions being upon the contractual obligation arising from the grant of the State to the Board of Commissioners, and from the said Board to Wisner and Dresser, and the interpretations of said contracts being that the grant from the State to the Board took from the State the right to otherwise dispose of the lands, and further that the right to require transfer from the State was a continuing one as well to be exercised now as when originally granted, and that no subsequent statute could change the status of the contract, the said judicial interpretations of this contract become a part thereof and are to be read with the provisions of the Statute.

Petitioners declare that there were other issues presented by the pleadings and evidence, but that the Supreme Court of Louisiana either determined them with plaintiff in error or did not deem them necessary, in that it in special terms predicated its judgment to the issues presented under the plea of prescription and held that the Act 62 of 1912 was not in contravention to the Constitution of the United States.

Petitioners have specifically urged by pleadings and in brief that this Statute of limitation cannot stand without giving the law a retroactive effect; impairing the obligation of the contract in viola-

tion of Paragraph One of Section Ten of Article One of the Constitution of the United States; and without depriving plaintiff of its property without due process of law, in violation of Section One of the Fourteenth Amendment to the Constitution of the United States.

Petitioners aver That notwithstanding these facts, the Supreme Court of the State of Louisiana decided against the title right, privileges thus set forth and claimed by petitioners, and that the judgment so rendered is repugnant to the Constitution of the United States.

And your petitioners further aver that in the aforesaid judgment and proceedings errors were committed to the prejudice of petitioners as will appear more fully from the assignment of errors, which is filed herewith.

180 Wherefore, your petitioners pray that a writ of error from the Supreme Court of the United States may issue in this case to the Supreme Court of the State of Louisiana for the correction of errors so complained of, and that a transcript of record, proceedings and papers in this cause duly authenticated by the Clerk of the Supreme Court of the State, may be sent to the Supreme Court of the United States, as provided by law.

Dated this sixteenth day of June, 1920.

ATCHAFALAYA LAND CO., LMTD.,
SCHWING LUMBER & SHINGLE CO., LMTD.,
BOARD OF COMMISSIONERS OF THE
ATCHAFALAYA BASIN LEVEE DISTRICT,

By Their Attorneys,

WALTER J. BURKE,
F. J. SMITH,
F. E. DELAHOUSAYE,

Attorneys.

181 *(Original Assignment of Errors & Prayer for Reversal.)*

Supreme Court of the State of Louisiana,

No. 23733.

ATCHAFALAYA LAND COMPANY, LIMITED,

vs.

F. B. WILLIAMS CYPRESS COMPANY, LIMITED; SCHWING LUMBER & Shingle Company, Limited, Intervener; Board of Commissioners of the Atchafalaya Basin Levee District, Intervener.

Assignment of Errors and Prayer for Reversal.

Now come the Atchafalaya Land Company, Limited, Plaintiff and Appellee; and the Schwing Lumber & Shingle Company, Limited, Intervenor and Appellee; and the Board of Commissioners of the Atchafalaya Basin Levee District, Intervenor and Appellee, and file herewith their petition for a writ of error, and say that there are

errors in the records and proceedings of the above entitled case, and for the purpose of having the same reviewed by and in the Supreme Court of the United States, make the following assignment of errors, to-wit:

Assignment I.

The Supreme Court of Louisiana erred in holding the provisions of the Louisiana Statute, Act No. 62, of the General Assembly of 1912, applicable to this case, and in holding said Act to be consistent with the provisions of the Constitution of the United States in its application to this case, in that

(1) By Act No. 97, of the General Assembly of 1890, the State of Louisiana made a present grant of the lands the title to which is herein involved, to the Board of Commissioners of the Atchafalaya Basin Levee District, and in said act provided that said Board should have the right to convey said lands to third persons,

(2) By various contracts of sale and assignments thereof, 182 the petitioners, the Atchafalaya Land Company, Limited, became the owner of the beneficial title to said lands, under the title of said Board of Commissioners, and became entitled to a deed therefor upon demand; and the petitioner, the Schwing Lumber & Shingle Company, Limited, became the owner of an interest in said lands, to-wit, the timber thereon, one of the conditions of the contract for transfer of title from said Board of Commissioners to said other petitioners, being that said Board of Commissioners should protect and perfect in its grantees, said other petitioners, the title so transferred and conveyed. The contract of conveyance of said land by said Board of Commissioners was made prior to the enactment of said Act No. 62, of 1912, and was for a valuable consideration.

(3) Said obligation so resting upon said Board of Commissioners under said contract or contracts of sale and conveyance, was a continuing obligation, which would from its very terms and nature remain in full force and effect until full and perfect title should become vested in the grantees of said Board of Commissioners, to-wit, in said other petitioner herein, and without regard to lapse of time.

(4) Thereafter, another and different agency of said State of Louisiana, to-wit, the Auditor and Register of the State Land Office, caused to be issued various deeds or patents in the name of said State, to certain grantees or patentees, purporting to convey title to the lands herein involved.

(5) Said Board of Commissioners of the Atchafalaya Basin Levee District filed its petition of intervention in this suit in fulfillment of its said existing and continuing contractual obligation to protect and perfect the title so sold and conveyed or contracted to be conveyed, for a valuable consideration, and without notice on part of the grantees or mesne grantees of said Board of Commissioners of any defect in such title.

(6) This suit is in its form an action to vacate and annul said various deeds or patents so issued by the Register of the State Land Office and to have the lands set out as included in the grant by the State of Louisiana to the Board of Commissioners of the Atchafalaya Basin Levee District, (author of petitioners) anterior to the issuance of patent to defendants' author, and enjoining any interference with Plaintiff's and Intervenor's rights.

(7) Said Act No. 62 of the General Assembly of 1912, provides that suits to vacate patents theretofore issued by the State of Louisiana, must be instituted within six years from date of said enactment and that suits brought to vacate and annul patents thereafter issued by said State must be instituted within six years from issuance of such patents; that this action was not instituted within the period prescribed by said Act.

(8) In its application to the instant suit or case, and as given effect by the Supreme Court of Louisiana herein, said Act No. 62 of the General Assembly of 1912, is a law impairing the obligation of the contract existing between said Board of Commissioners and the other petitioners, the Atchafalaya Land Company, Limited, and the Schwing Lumber & Shingle Company, Limited, and the giving of effect thereto is in contravention of the Constitution of the United States, Article I, Section 10, providing that:

No State shall * * * : pass any Bill of Attainder, ex post facto Law, or Law impairing the obligation of contracts. * * *

(9) The unconstitutionality of said Act No. 62 of the General Assembly of 1912 was seasonably urged in the District and Supreme Courts of the State of Louisiana, and the final decision of said Louisiana Supreme Court was in favor of the constitutionality of said Act, and the validity of said Act No. 62 was made the sole basis of the final decision and judgment of said court.

Assignment II.

The Supreme Court of Louisiana erred in deciding and adjudging that Legislative Act No. 62, of the General Assembly of 1912 could constitutionally operate, either directly or by necessary effect, to impair the obligation of a lawful contract of sale and warranty, made by the Board of Commissioners of the Atchafalaya Basin Levee District, an agency of the State of Louisiana, and its grantees, immediate or mesne, such contractual obligation being a continuing one, and running in favor of the other petitioners for writ of error herein, to-wit, the Atchafalaya Land Company, Limited, and the Schwing Lumber & Shingle Company, Limited, and in giving such effect to said Legislative Act as impairs the obligation of the contract existing between said Board of Commissioners and said other petitioners herein, in contravention of the prohibition of the Constitution of the United States, Article I, Section 10.

Assignment III.

The Supreme Court erred in giving such effect to the 1912 statute of limitations as prevents the Board of Commissioners of the Atchafalaya Basin Levee District from fulfilling its pre-existing and continuing contractual obligation to the Atchafalaya Land Company, Limited, and to the Schwing Lumber & Shingle Company, Limited, thereby depriving said named companies of their property and property rights in and under certain valid and pre-existing contracts of sale, without due process of law, and in contravention of the Constitution of the United States, Amendment XIV, Section 1.

For which errors the petitioners, appellees in the Supreme Court of Louisiana, and plaintiffs below, to-wit, the Board of Commissioners of the Atchafalaya Basin Levee District, the Atchafalaya Land Company, Limited, and the Schwing Lumber & Shingle Company, Limited, pray that the said judgment of the Supreme Court of Louisiana, be reversed and that a judgment be rendered in favor of said petitioners, (plaintiffs below) and for costs.

Respectfully submitted,

ATCHAFALAYA LAND CO., LMTD.,
SCHWING LUMBER & SHINGLE CO., LMTD.,
BOARD OF COMMISSIONERS OF THE
ATCHAFALAYA BASIN LEVEE DISTRICT.

By Their Attorneys,

WALTER J. BURKE,
VENTRESS J. SMITH,
F. E. DELAHOUSSAYE.

185 *(Order Granting Writ of Error.)*

Supreme Court, State of Louisiana,

No. 23733.

ATCHAFALAYA LAND COMPANY, LIMITED,

vs.

F. B. WILLIAMS CYPRESS COMPANY, LIMITED; SCHWING LUMBER & Shingle Company, Limited; Intervener; Board of Commissioners of Atchafalaya Basin Levee District, Intervener.

On reading the petition of the Atchafalaya Land Company, Limited, Plaintiff below and Appellee, Schwing Lumber & Shingle Company, Limited, Intervenor and Appellee, Board of Commissioners of the Atchafalaya Basin Levee District, Intervenor-Appellee, joining as plaintiffs in error and Assignment of Errors, and upon due consideration of the record of said cause:

It is ordered: That a writ of Error be allowed from the Supreme Court of the United States to the Supreme Court of the State of Louisiana as prayed for in said petition, and that writ of error and citation thereon be issued, served and returned to the Supreme Court of the United States in accordance with law, upon condition that the said petitioners and plaintiffs in Error, named above give surety in the sum of two thousand (\$2,000.00) Dollars, that the said plaintiff in error shall prosecute said writ of error to effect, and, if said plaintiff in error fail to make his plea good, shall answer to the defendant in error for all costs and damages that may be adjudged or decreed on account of said writ of error.

In testimony whereof, I have hereunto set my hand this 17 day of June, 1920.

[Seal of the Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
*Chief Justice of the Supreme
Court of Louisiana.*

185¹/₂ [Endorsed:] No. 23733, Supreme Court Louisiana. Atchafalaya Land Co., Ltd., v. F. B. Williams, Cypress Co., Ltd., Schwing Lumber & Shingle Co., Ltd., Intervener; Board of Commissioners of Atchafalaya Basin Levee District, Intervener. Petition for writ of error & assignment of errors, etc. Filed June 17, 1920. Paul E. Mortimer, clerk.

186 (*Bond for Writ of Error—Copy of.*)

Supreme Court of Louisiana.

No. 23733.

ATCHAFALAYA LAND COMPANY, LIMITED (Plaintiff Below and in Error),

vs.

F. B. WILLIAMS CYPRESS COMPANY, LIMITED (Defendant Below and in Error); Schwing Lumber & Shingle Company, Limited Intervener (Plaintiff in Error); Board of Commissioners of the Atchafalaya Basin Levee District Intervener (Plaintiff in Error).

Bond.

Know all men by these presents, That we, the Atchafalaya Land Company, Limited; the Schwing Lumber & Shingle Company, Limited; and the Board of Commissioners of the Atchafalaya Basin Levee District, as principals, and National Surety Company as surety, are held and firmly bound unto the F. B. Williams Cypress Company, Limited, in the full and just sum of Two Thousand, (\$2,000.00)

Dollars, to be paid to the said F. B. Williams Cypress Company, Limited, its successors and assigns; to which payment, well and truly to be made we bind ourselves, jointly and severally by these presents.

Scaled with our corporate seals and dated this 21 day of June, in the year of Our Lord, Nineteen hundred and twenty.

Whereas, lately at a term of the Supreme Court of Louisiana, in a suit pending in said Court, between the Atchafalaya Land Company, Limited, Plaintiff, Appellee, and the F. B. Williams Cypress Co., Ltd., defendant Appellant; the Schwing Lumber & Shingle Company, Ltd., Being an Intervenor, Appellee and the Board of Commissioners of the Atchafalaya Basin Levee District being an Intervenor, Appellee, being No. 23,733 a certain judgment was rendered against the said Atchafalaya Land Co., Ltd., The Schwing Lumber & Shingle Company, Limited, and the Board of Commissioners of the Atchafalaya Basin Levee District, and the Atchafalaya Land Company, Limited,—the Schwing Lumber & Shingle Company, Limited, and the Board of Commissioners of the Atchafalaya

Basin Levee District having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said F. B. Williams Cypress Company, Limited, citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now the condition of the above obligation is such, That if the said Atchafalaya Land Company, Limited, the said Schwing Lumber and Shingle Company, Limited, and the said Board of Commissioners of the Atchafalaya Basin Levee District shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

ATCHAFALAYA LAND CO., LTD.,
IN LIQUIDATION.

[SEAL.]

(Signed)

By M. A. DRESSER,
Principal,
Com.

SCHWING LUMBER & SHINGLE
CO., LTD.,

[SEAL.]

(Signed)

By SAML. P. SCHWING,
Principal,
President.

BOARD OF COMMISSIONERS A.
B. L. DIST.,

[SEAL.]

(Signed)

By VICTOR M. LEFEBVRE,
Principal,
President.

[SEAL.]

NATIONAL SURETY COMPANY,

(Signed)

By LOUIS COIRON,
Res. Vice-President,

Surety,

Attest:

(Signed) J. M. DRESSER,
Com.
" E. B. SCHWING,
Secretary.
" THOS. G. ERWIN,
Secretary.
" LOUIS VALE,
Res. Asst. Secretary.

Attest:

Approved:

Dated June 25th, 1920.

[SEAL.]

(Signed)

FRANK A. MONROE,
Chief Justice Supreme
Court of Louisiana.

Endorsed: No. 23733—Supreme Court of Louisiana—Atchafalaya Land Company, Ltd., Schwing Lumber & Shingle Company, Ltd., Intervenor and the Board of Commissioners of the Atchafalaya Basin Levee District, Intervenor, Plaintiffs-in-error, vs. F. B. Williams Cypress Company, Ltd., Defendant-in-error—Bond for Writ of Error—Filed June 25th, 1920.—(Signed) Paul E. Mortimer, clerk.

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(Original Writ of Error.)

UNITED STATES OF AMERICA, ss.

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Atchafalaya Land Co., Ltd., Plaintiff; The Schwing Lumber and Shingle Co., Ltd., Intervenor; The Board of Commissioners of the Atchafalaya Basin Levee District, Interveners, against the F. B. Williams Cypress Co., Ltd., being Docket No. 23733 of the Docket of said Court, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the

189 under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or com-

mission: a manifest error hath happened to the great damage of the said Atchafalaya Land Co., Ltd., Plaintiff in error; Schwing Lumber & Shingle Co., Ltd., Intervener below and Plaintiff in error, and the Board of Commissioners of the Atchafalaya Basin Levee District, Intervenor, plaintiff in error, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, the 25th day of June, in the year of our Lord one thousand nine hundred and twenty.

[Seal of Supreme Court of the State of Louisiana.]

H. J. CARTER,

*Clerk of the District Court of the United
States for the Eastern District of Louisiana.*

Allowed by

FRANK A. MONROE,

Chief Justice Supreme Court of Louisiana.

[Endorsed:] No. 23733. Atchafalaya Land Co., Ltd., Schwing Lumber and Shingle Co., Ltd., Intervener; The Board of Commissioners of the Atchafalaya Basin Levee District, Interveners, plaintiffs-in-error, versus F. B. Williams Cypress Co., Ltd., defendant-in-error. Writ of error. Filed June 25, 1920. Paul E. Mortimer, clerk.

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Certificate of Lodgment.

UNITED STATES OF AMERICA,

State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that there was lodged with me, as such clerk, on the 17th day of June, A. D. 1920, in the matter of Atchafalaya Land Company, Ltd., Schwing Lumber & Shingle Co. Ltd., Intervenor and the Board of Commissioners of the Atchafalaya Basin Levee District, Intervenor, Plaintiffs-in-error, vs. F. B. Williams Cypress Co., Ltd., Defendant-in-error:

1st. The original petition for writ of error, as herein set forth.

2nd. The original assignment of errors, as herein set forth.

I further certify that there was also lodged with me, in the said cause, on the 25th day of June, 1920:

1st. The original writ of error, as herein set forth.

2nd. One copy of the writ of error to be lodged in my office, and one copy to be served on the defendant-in-error.

3rd. The original bond for writ of error, a copy of which is herein set forth.

4th. The original agreement as to the preparation of the transcript to be taken to the Supreme Court of the United States, a copy of which is herein set forth.

5th. The original acceptance of service, as herein set forth.

In witness whereof, I hereunto set my hand and affix the seal of the Court aforesaid, at the city of New Orleans, this the 7th day of July, Anno Domini, A. D. 1920.

[Seal of Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,

Clerk Supreme Court of Louisiana.

191 *Agreement as to Preparation of Transcript to be Taken to the Supreme Court of the United States.*

Supreme Court of Louisiana.

No. 23733.

ATCHAFALAYA LAND COMPANY, LIMITED,

VS.

F. B. WILLIAMS CYPRESS COMPANY, LIMITED; SCHWING LUMBER & Shingle Company, Limited, Intervenor; Board of Commissioners of the Atchafalaya Basin Levee District, Intervenor.

To the clerk of the Supreme Court of Louisiana:

In preparing the record on writ of error, you are hereby directed, by agreement between counsel for Plaintiff, Defendant, and Intervenor, being all the parties to the suit, to include therein for the use of the Supreme Court of the United States, only:

1st. The pleadings in their entirety.

2nd. The judgment of the District Judge on the exceptions and on the merits.

3rd. The agreed statement of facts and admissions.

4th. The patents issued to Pharr and Williams.

5th. The judgment of the Supreme Court.

6th. The minutes showing date of judgment, the motion for rehearing, refusal. And all contracts or documents embracing the entire transcript.

It is further stipulated either party may require, without further agreement, the inclusion of any other documents.

(Signed) BORAH, HIMEL, BLOCK & BORAH,

" HALL, MONROE & LEMANN,

" BURKE & SMITH,

" J. H. MORRISON,

*Attorneys for Atchafalaya Land Co., Ltd., Plt.,
and Board of Commissioners of Atchafalaya
Basin Levee District and Schwing Lumber &
Shingle Company, Limited, Intervenor.*

Endorsed: No. 23,733—Supreme Court of Louisiana—Atchafalaya Land Company, Ltd., Schwing Lumber & Shingle Co. Ltd., Intervenor, and the Board of Commissioners of the Atchafalaya Basin Levee District, Intervenor, Plaintiffs-in-error, vs. F. B. Williams Cypress Co. Ltd., Defendant-in-error—Agreement as to preparation of transcript to be taken to the Supreme Court of the United States.—Filed June 25, 1920.—(Signed) Paul E. Mortimer, Clerk.

(Acceptance of Service.)

Supreme Court of Louisiana.

No. 23733.

Writ of Error.

Acceptance of Service.

I hereby accept service of the citation of the writ of error as attorney of record for defendant, F. B. Williams Cypress Company, Limited, in the matter entitled Atchafalaya Land Company, Limited, vs. F. B. Williams Cypress Company, Limited; Schwing Lumber & Shingle Company, Limited, Intervenor; Board of Commissioners of the Atchafalaya Basin Levee District, Intervenor, being No. 23,733 of the docket of the Supreme Court of Louisiana, and waive formal service of citation.

CHARLES F. BORAH,
MONTE M. LEMANN,

Dated this 25th day of June, 1920.

[Endorsed.] No. 23733. Supreme Court Louisiana. Atchafalaya Land Co., Ltd., Schwing Lbr. & Shingle Co., Ltd., and Board Commissioners of Atchafalaya Basin Levee District, Interveners, plaintiffs in error, v. F. B. Williams Cypress Co., Ltd., defendant in error. Acceptance of service. Filed June 25th, 1920. Percy J. Heines, deputy clerk.

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Return to Writ.

UNITED STATES OF AMERICA,

State of Louisiana:

Supreme Court of the State of Louisiana.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings had in the within entitled cause, together with all things concerning the same (as per agreement of counsel, at page 191 of this transcript).

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this 7th day of July, Anno Domini, One thousand, nine hundred and twenty.

[Seal of the Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,

*Clerk Supreme Court of Louisiana.**Costs of Suit.*

Costs paid by plaintiffs-in-error:

Paid in lower court.....	\$10.00
Paid for transcript to Supreme Court United States.....	25.00

Costs paid by defendant-in-error:

Paid for transcript lodged in Supreme Court of Louisiana....	\$80.00
Deposit in Clerk's Office Supreme Court.....	25.00


Endorsed on cover. File No. 27,806. Louisiana Supreme Court. Term No. 449. Atchafalaya Land Company, Limited; Schwing Lumber & Shingle Company, Limited, and The Board of Commissioners of the Atchafalaya Basin Levee District, plaintiffs in error, vs. F. B. Williams Cypress Company, Limited. Filed July 14th, 1920. File No. 27,806.

FILED
AUG 29 1921
JAMES D. M.

NO  106

IN THE

W. S.
Supreme Court of Louisiana

OCTOBER TERM 1  1921

ATCHAFALAYA LAND COMPANY LIMITED:
SCHWING LUMBER & SHINGLE COMPANY
LIMITED, AND THE BOARD OF COMMIS-
SIONERS OF THE ATCHAFALAYA
BASIN LEVEE DISTRICT.

Plaintiffs in Error,

VERSUS

F. B. WILLIAMS CYPRESS COMPANY LIMITED.

In Error to the Supreme Court of the State of Louisiana.

Brief of Paintiffs in Error.

WALTER J BURKE,
VENTRESS J. SMITH,
F. ERNEST DELAHOUSAYE,
CHARLES F. CONSAUL,

Of Counsel for Plaintiffs in Error.

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NO.449.

IN THE

Supreme Court of the United States

OCTOBER TERM 1920.

ATCHAFALAYA LAND COMPANY LIMITED:
SCHWING LUMBER & SHINGLE COMPANY
LIMITED, AND THE BOARD OF COMMIS-
SIONERS OF THE ATCHAFALAYA
BASIN LEVEE DISTRICT.

Plaintiffs in Error,

vs.

F. B. WILLIAMS CYPRESS COMPANY LIMITED.

In Error to the Supreme Court of the State of Louisiana.

Brief of Paintiffs in Error.

SYLLABUS.

1. A grant by the State to a Board of Commissioners of a Levee District, organized with the right to own and sell property, of all lands acquired by the State under the swamp land grants of Congress, and lying within a district, in the terms that the same are hereby given, granted, bargained, donated, conveyed and delivered" subject to the further requirements that deed be executed upon the demand

of the Board and be recorded in the Parish in which the land deeded may be located, is a grant *in praesenti*.

Board of Commissioners of Caddo Levee District vs. Grace Receiver et als, 145 La. R. 962 *State Ex Rel; Atchafalaya Basin Levee Boards vs. Capdeville Auditor*, 142 La. R. 111; *Atchafalaya Land Co. vs. Grace*, 143 La. R. 638; *McDade vs. Levee Board*, 109 La. R. 640; *Hall vs. Board of Com., etc.*, 111 La. R. 913; *Lattier vs. Bossier etc.*, 111 La. R. 927; *Hertigan vs. Weaver*, 126 La. R. 491; *State Ex. Rel. Board of Com. etc. vs. Capdeville, State Auditor*, 128 La. R. 283.

2. Where the terms of the grant further stipulate that "it shall be the duty of the auditor and Register of the State Land Office on behalf of and in the name of the State, to convey to the said Board of Commissioners, by proper instruments of conveyance the lands hereby granted or intended to be granted and conveyed to said Board, whenever from time to time said Auditor and said Register of the State Land Office, or either of them, shall be requested so to do by the said Board of Levee Commissioners, or by the President thereof," it leaves it entirely at the option of the grantee, when to require title deed to be executed to it.

State Ex. Rel. Atchafalaya Basin Levee Board vs. Capdeville Auditor, 142 La. R. 111, *Atchafalaya Land Co. vs. Grace et als*, 143 La. R. 638.

3. When the State Supreme Court in interpreting this very contract in the two cases just above referred to, has held that the grant withdrew the lands from sale by the State—that the right to demand title deed is a continuing one—of as much force to-day as when the grant was first made, the judicial interpretation becomes a part of the contract.
4. After the grant by the State to the Levee Board the Register of the State Land Office was deprived of any authority to sell the lands in the name of the State.

State Ex Rel Board of Commissioners Caddo Levee District vs. Grace Receiver, Capdeville Auditor, and Douglas, 145 La. R. 966; *State Ex Rel., Atchafalaya Basin Levee Board vs. Capdeville, Auditor*, 142 La. R. 111; *Atchafalaya Land Co. vs. Grace et al*, 143 La. R. 638; *McDade vs. Bossier Levee Board*, 109 La. R. 640; *Hall vs. Board of Commissioners*, 111 La. R. 925; *Hartigan vs. Weaver*, 126 La. R. 492; *Jewel vs. Poche*, 2 La. A. 149; *McGill vs. McGill* 4 La. 266; *Doane vs. R. R.* 11 La. A. 506; *Hood vs. Martin*, 11 La. page 544; *Davis vs. Wiebold*, 139 U. S. 507, 11 Sup. Ct. Rep. 628; *Stoddard et als vs. Chambers*, 2 Howard 284; *Learenworth & G. R. Co. vs. U. S.*, 92 U. S. 733, 23 Sup. Ct. Reports 634; *Steel vs. St. Louis Smelting and Refining Co.*, 106 U. S. 447; 1st Sup. Ct. Reporter 389; *Riley vs. Wells*, 154 U. S. 578, 14 Sup. Ct. Reporter 1166.

5. When the Board of Commissioners, under the specific legislative authority to sell the lands granted it, did sell all of its rights, with the right to secure title deed in the same manner as the Board might do, and which right, under the legislative grant, and the judicial interpretation thereof is a continuing right, the legislature cannot thereafter, directly or indirectly, impair the contract by changing the term of its execution, or rights of enforcement, from a continuing one, to one limited by a statute of limitation.

Same authorities as above, also: *Watson on Constitution*, Vol. 1 beginning at page 788; *International Building and Loan Association vs. Hardy*, 24 L. R. A., page 284; *State of Louisiana Ex Rel Ranger vs. City of New Orleans*, 102 U. S., 133; *Ruling Case Law*, Vol. 6, pages 308-310; *Blouin vs. Ledet*, 109 La. R. 710; *Edwards vs. Kearzey*, 96 U. S. 595; *U. S. Ex Rel Wolff vs. Mayor and City of New Orleans*, 103 U. S. 399; *Green vs. Biddle*, 8 Wheat 1; *Walker vs. Whitehead*, 83 U. S. 357; *Shields vs. Pipes*, 31 A. 765; *Shield vs. Chase*, 32 A. 411.

6. A legislative provision to the effect that when ever a patent issues by the Register of the State Land Office, is signed by the Governor and is recorded in the manner prescribed, it is unassailable after six years, must be interpreted to refer to such lands as the State owns and for which it might authorize the issuance of patent. The statute is one of repose for the benefit of owners of patent lands where

the right of the officer to issue, might be doubted. It cannot be interpreted to prevent the rightful owners of property rights to contest a wrongful divestiture of title. Such an application in the instant case would be a divestiture of vested rights without due process of law, and an impairment of the contract as set forth hereinbefore.

Black on Constitution, page 481 *et seq.*

7. While the parties to a contract must contract with knowledge that the Legislature may charge the remedy, may even change the prescriptive term within which the parties may sue to enforce contracts, this rule does not apply to clauses written in the contract, of its substance and nature, either as to the mode of executing the contract between the parties, or as to the time within which it must be executed. That which is written in the contract, as part thereof, is so much of the essence of the obligation of the contract that it can not be affected by legislation contrary to its provisions.

Cooley Const. Limitations, 402 *et seq.*; *Blacks Constitutional Law*, Sec. Ed., Sections 271, 272, 273, 274, 284; *Walker vs. Whitehead*, 83 U. S. 314; 16 Wallace, 357.

The judicial interpretation of a statute upon which is based, or out of which arises a contract—and its method of enforcement—becomes a part of the contract itself. *Enc. of U. S. Sup. Ct. Reports*, Vol 6, p. 774. See Notes.

STATEMENT OF THE CASE.

This cause comes before this Court by Writ of Error to the Supreme Court of the State of Louisiana issued upon the petition of the Atchafalaya Land Co. Ltd., the plaintiff below; and the Schwing Lumber & Shingle Co. Ltd., and the Board of Commissioners of the Atchafalaya Basin Levee District, Interveners, who joined the Plaintiff.

The suit as originally filed is one in which the Atchafalaya Land Co. Ltd. as the assignee (through mesne Conveyance) of the Board of Commissioners of the Atchafalaya Basin Levee District, sues to have certain patents issued by the Register of the State Land Office declared null, and the lands affected thereby decreed to have been included in a grant by the State of Louisiana to the Board of Commissioners of the Atchafalaya Basin Levee District; and that the F. B. Williams Cypress Co. Ltd. be enjoined from further trespassing, and from cutting and removing the timber from these lands.

The Schwing Lumber and Shingle Co. intervened upon the same grounds claiming to be the owners of the timber rights on the land and seeking the same relief. The Board of Commissioners intervened upon the same grounds, and upon the additional ground that in the sale of its rights as acquired from the State, it bound itself to aid and assist the vendee in securing title to the property sold. Its appearance is for the purpose of vindicating the title of claimant, the Atchafalaya Land Co. Ltd.

The litigation is predicated upon the following propositions:

The State of Louisiana, by Act 97 of 1890 donated to the Board of Commissioners of the Atchafalaya Basin Levee

District all lands within the confines of this District, with the right to require deed to be made at any time upon demand of the Board or its President. The act provided that the Board could sell or otherwise dispose of the land granted.

The language of the grant as set out in section eleven of the Act 97 of 1890 is as follows:

"Section 11. Be it further enacted, etc., that in order to provide additional means to carry out the purposes of this act, and to furnish resources to enable said board to assist in developing, establishing and completing a levee system in said district, all lands now belonging, or that may hereafter belong to the State of Louisiana, and embraced within the limits of the levee district, as herein constituted, shall be, and the same hereby are given, granted, bargained, donated, conveyed and delivered unto said Board of Levee Commissioners of the Atchafalaya Basin Levee District whether said lands or parts of lands originally granted by the Congress of the United States to this State or whether said lands have been, or may hereafter be forfeited to, or bought in by or for, or sold to the State, at tax sales for non-payment of taxes, where the State has, or may hereafter become the owner of lands, by or through tax sales, conveyances thereof, shall only be made to said Board of Levee Commissioners, after the period of redemption shall have expired; provided, however, that any and all former owners of lands which have been forfeited to purchasers by or sold to the State for non-payment of taxes, may at any time within six months next ensuing after the date of the passage of this act redeem said lands, or any of them upon paying to the Treasurer of the State all taxes, interests, costs and penalties due thereon down to the date of such redemption, but such redemption shall be deemed and be taken to be sales of

lands by the State, and all and every sum or sums of money so received shall be placed to the credit of the Atchafalaya Basin Levee District. After the expiration of said six months it shall be the duty of the Auditor and the Register of the State Land Office on behalf of and in the name of the State, to convey to the said Board of Levee Commissioners, by proper instruments of conveyance the lands hereby granted or intended to be granted and conveyed to said board, whenever from time to time said Auditor and said Register of the State Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners, or by the president thereof, and thereafter said president of said board shall cause said conveyance to be properly recorded in the recorder's office of the respective parishes wherein said lands are or may be located, and when said conveyances are so recorded the title to said lands, with the possession thereof, shall, from thenceforth vest absolutely in said Board of Levee Commissioners, its successors or grantees; said lands shall be exempted from taxation after being conveyed to and while they remain in the possession or under the control of said board. Said Board of Levee Commissioners shall have the power and authority to sell, mortgage, pledge or otherwise dispose of said lands in such manner and at such times and for such prices as to said Board shall seem proper, but all proceeds derived therefrom shall be deposited in the State Treasury to the credit of the Atchafalaya Basin Levee District, and shall be drawn out only upon the warrants of the president of said board, properly attested as provided in this act, provided that the tax provided shall not be levied on produce raised on lands not alluvial."

In 1900 the Board of Commissioners sold these lands and all rights thereto, to Edward Wisner and J. M. Dresser.

The deed was of "all lands donated, ceded and transferred by act of the Legislature to the said party of the first part" (Board of Commissioners, etc.) "to include all lands sold for taxes at this date, but as yet not ceded to the State, or to the party of the first part, but not to include lands hereafter accruing to the State at tax sale, or to the party of the first part otherwise than by tax sales already made, to include, in other words, only the lands at this date owned by the party of the first part, or to which the said party of the first part can at this date lay just claim, and also all lands heretofore sold at tax sale but for which title has not been made to the State."

The deed further provided: "That the party of the first part is to bind itself, with all its rights, powers and privileges and prerogatives to perfect its title, or the title acquired under the agreement to all lands to which it could have, and the parties of the second part" (Wisner & Dresser) "can now justly lay claim to, and to do so whenever requested by the said party of the second part; all proceedings, however, to be at the expense of the parties of the second part."

The Atchafalaya Land Co. Ltd., which is the representative of Wisner & Dresser in the exercise of the rights acquired above, while engaged in securing title deeds to various tracts to which it had acquired right, ascertained that after the grant by the State to the Board of Commissioners, the Register of the State Land Office, patented to Pharr & F. B. Williams as still belonging to the State, the lands subject of controversy.

Under the situation outlined, the Atchafalaya Land Co. Ltd. as assignee of Wisner and Dresser, filed suit in the 19th

Judicial District Court in Iberia Parish, setting forth its right to have title deed executed to it; declaring that the patent to Pharr and Williams was a nullity. In a supplemental petition, it averred as violative of the Federal Constitution, Act 62 of 1912, of the General Assembly of Louisiana which reads: "That all suits or proceedings of the State of Louisiana, private corporations, partnerships or persons to vacate or annul any patent issued by the State of Louisiana, duly signed by the Governor of the State and Register of the State Land Office, and of record in the State Land Office, or any transfer of property by any sub-division of the State, shall be brought only within six years of the issuance of patent, provided, that suits to annul patents previously issued shall be brought within six years of the passage of the act." This additional plea was presented because the statute was urged in bar to plaintiff's action. The issue was directly presented that this statute impaired the obligation of a contract and divested vested rights without due process of law.

The Intervenors made the same issue, the Board of Commissioners having joined the plaintiff in asking that its title be recognized for the benefit of its assignees, as it was bound to do by the terms of its sale; and the Schwing Lumber & Shingle Co. Ltd. sought the same relief to the extent of the timber rights it had acquired on all lands belonging to Plaintiff.

The Defendant admittedly representing the original patentees, presented several pleas, each of which was exclusively within the Jurisdiction of the State Courts save the plea of prescription based upon act 62 of 1912, and this latter came within the Jurisdiction of this Honorable Court because of the attack levelled against it when sought to be invoked against Petitioner's and Intervenor's previous title,

in that it impaired the obligation of a contract and divested vested rights without due process of law .

The District Judge gave judgment to the Plaintiff and Intervenor annulling the patents, and recognizing their respective rights to the land under the circumstances set forth, and enjoining the Defendant in accordance with Petitioner's prayer.

The State Supreme Court passed upon the various issues presented by the pleadings, and which were of the exclusive jurisdiction of the State Court, but **rested its decision in favor of Defendant upon the Federal question alone, and specifically so declared.**

There was judgment of reversal of the decree of the District Judge with the corresponding denial of the prayers of Plaintiffs and Intervenor.

The issue is therefore presented to this Honorable Court upon the question of the Constitutionality of Act 62 of 1912, when its limitation is sought to be applied to an action to annul a patent issued by the State after the land patented by the State had been granted by it to a Levee Board.

STATEMENT OF FACTS.

It would appear that any statement of facts elicited on trial would be in the main useless under the special issue presented; but some of the facts may elucidate the situation.

The State granted the lands in question to the Board of Commissioners in the language already quoted above from Section 11 of Act 97 of 1890.

Special attention is called to the fact that it is a part of this grant, not only that the grantee should have its own time in which to require title deed to be made, but also that while the land remained in the name of the Board, it was not subject to taxation. When in the exercise of its right to sell, the Board transferred its right and interests to third persons, it not only transferred the right to require title deed to be made at their option, but there continued the exemption from taxation, so long as the transfer was not made.

The Board of Commissioners sold the lands to Edward Wisner & John M. Dresser in 1900, the contract stipulating that it sold every right to which it might lay just claim, and bound itself to lend all its powers and machinery to make title to its assignees. (See Exhibit A, Transcript page 19).

This deed said it was to be considered a promise of sale until the balance of the purchase price of One hundred and twenty-thousand dollars was paid.

When the balance was paid there was executed a supplemental deed so declaring, and containing the obligation assumed by the Board of Commissioners to lend all its aid to make title to its vendee. (Exhibit P.B Transcript page 21).

The exhibit last mentioned shows that from the inception the Board of Commissioners interpreted the contract

as one requiring title deed to be executed when called upon. Subject to the objection urged by counsel for the defense as to its materiality and relevancy, there is in the record the admission that the President of the Board would testify, if sworn, that it has been the practice of the Board to make deeds to the Plaintiff as recognized assignee of Wisner and Dresser; or to any person designated by this assignee. This is coupled with the further admission that on cross examination he would testify that no deed had been executed by the Board to the particular lands in question. This is not an issue, inasmuch as the suit is to annul a patent issued by the State to the land after the grant by the State to the Board of Commissioners, but reference is made to it as showing the manner in which the contracting parties executed the contract.

The lands were patented by the Register of the State Land Office to Pharr and Williams after the grant by the State to the Board of Commissioners, and consequently after the State had been divested of title; the grant by the State being of date of the Act 97 of 1890—July 1890; and the patents bearing dates of September and November 1890. (Transcript pages 71 to 80).

It is only shortly before the filing of this suit, that Plaintiff or Intervenors made any claim to the specific land in controversy, and much is made of this by the defense.

It is of moment to direct attention to the language of the grant which gave the grantee the right to secure title deed to the land or any portion of it upon its request and at its pleasure. (See Section Eleven of Act 97 of 1890 quoted above).

The sale to Wisner and Dresser by the Board conveyed the same right. See Exhibits P-A & P-B, pages 19 to 21 referred to above).

The statement of admitted facts shows the interpretation of the contract between the parties as being a continuous one, by the execution of deeds when ever request was made. (See transcript page 93).

It may be stated in connection with these facts, that the right to have title deeds executed is a continuing right, has been specifically recognized by the interpretative decisions of this grant by the State Supreme Court. These decisions will be referred to hereinafter.

F. B. Williams Cypress Co. has been operating on the lands for some years. The Petitioner or Intervenors had not knowledge of this. (Transcript page 94).

While it is true a swamp foreman of the Intervenor, Schwing Lumber & Shingle Co. Ltd., knew of these operations, it is admitted he did not know of the claim of his principal to the land. (Transcript page 94).

When the State of Louisiana made grant of the property, it did so without description of any specific tracts. It gave all the lands within the confines of the Levee District. It did so by present grant with specific declaration of a present delivery to the grantee. The deed to any specific tract was to be executed upon the demand of the grantee. (See Sec. 11 of Act 97 of 1890 quoted above).

When the Board of Commissioners sold, it was under the same general terms, with subrogation of all the rights by it acquired, and the further obligation to use its machinery and prerogatives to complete the making of title, that is the granting of title deed. (Exhibit P. A. & P. B. Trans. pages 19 and 21).

The petitioner has been engaged these many years in

securing deeds as it elected; and the manner of ascertaining what lands were included, necessarily required abstracting to ascertain what lands the State had subject to disposal, when it disposed of all it owned within the confines of the Levee District.

The record shows that F. B. Williams the original patentee and F. B. Williams Cypress Co. Ltd. are the same. Trans. p. 94.

ASSIGNMENT OF ERRORS AND LEGAL ARGUMENT THEREON.

Assignment I.

The Supreme Court of Louisiana erred in holding the provisions of the Louisiana Statute, Act No. 62, of the General Assembly of 1912, applicable to this case; and in holding said Act to be consistent with the provisions of the Constitution of the United States in its application to this case, in that:

(1) By Act No. 97, of the General Assembly of 1890, the State of Louisiana made a present grant of the lands, the title to which is herein involved, to the Board of Commissioners of the Atchafalaya Basin Levee District; and in said Act provided that said Board should have the right to convey said lands to third persons.

(2) By various contracts of sale and assignments thereof, the Petitioners, the Atchafalaya Land Company, Limited, became the owner of the beneficial title to said lands, under the title of said Board of Commissioners, and

became entitled to a deed therefor upon demand; and the Intervenor, the Schwing Lumber & Shingle Company, Limited, became the owner of an interest in said lands, to-wit, the timber thereon; one of the conditions of the contract for transfer of title from said Board of Commissioners to said other Petitioners, being that said Board of Commissioners should protect and perfect in its grantees, said other Petitioners, the title so transferred and conveyed. The contract of conveyance of said land by said Board of Commissioners was made prior to the enactment of said Act No. 62, of 1912, and was for a valuable consideration.

(3) Said obligation so resting upon said Board of Commissioners under said contract or contracts of sale and conveyance was a continuing obligation, which would from its very terms and nature remain in full force and effect until full and perfect title should become vested in the grantees of said Board of Commissioners, to-wit: in said Petitioners herein, and without regard to lapse of time.

(4) Thereafter, another and different agency of said State of Louisiana, to-wit, Register of the State Land Office, caused to be issued various deeds or patents in the name of said State, to certain grantees or patentees, purporting to convey title to the lands herein involved.

(5) Said Board of Commissioners of the Atchafalaya Basin Levee District filed its petition of intervention in this suit in fulfillment of its said existing and continuing contractual obligation to protect and perfect the title so sold and conveyed or contracted to be conveyed, for a valuable consideration, and without notice on part of the grantees or *mesne* grantees of said Board of Commissioners of any defect in such title.

(6) This suit is in its form an action to vacate and annul said various deeds or patents so issued by the Register of the State Land Office and to have the lands set out as included in the grant by the State of Louisiana to the Board of Commissioners of the Atchafalaya Basin Levee District, (author of Petitioners) anterior to the issuance of patent to Defendant's author, and enjoining any interference with Plaintiff's and Intervenor's rights.

(7) Said Act No. 62 of the General Assembly of 1912, provides that suits to vacate patents theretofore issued by the State of Louisiana, must be instituted within six years from date of said enactment; and that suits brought to vacate and annul patents thereafter issued by said State must be instituted within six years from issuance of such patents; that this action was not instituted within the period prescribed by said Act.

(8) In its application to the instant suit or case, and as given effect by the Supreme Court of Louisiana herein, said Act No. 62 of the General Assembly of 1912, is a law impairing the obligation of the contract existing between said Board of Commissioners and the other petitioners, the Atchafalaya Land Company, Limited, and the Schwing Lumber & Shingle Company, Limited, and the giving of effect thereto is in contravention of the Constitution of the United States, Article 1, Section 10, providing that:

"No State shall pass any Bill of Attainder, *ex post facto* Law, or Law impairing the obligation of contracts."

(9) The unconstitutionality of said Act No. 62 of the

General Assembly of 1912 was seasonably urged in the District and Supreme Courts of the State of Louisiana, and the final decision of said Louisiana Supreme Court was in favor of the constitutionality of said Act, and the validity of said Act No. 62 was made the sole basis of the final decision and judgment of said court.

Assignment II.

The Supreme Court of Louisiana erred in deciding and adjudging that Legislative Act No. 62, of the General Assembly of 1912 could constitutionally operate, either directly or by necessary effect, to impair the obligation of a lawful contract of sale and warranty, made by the Board of Commissioners of the Atchafalaya Basin Levee District, an agency of the State of Louisiana to its grantees, immediate or mesne; such contractual obligation being a continuing one, and running in favor of the other petitioners for writ of error herein, to-wit, the Atchafalaya Land Company, Limited, and the Schwing Lumber & Shingle Company, Limited, and in giving such effect to said Legislative Act as impairs the obligation of the contract existing between said Board of Commissioners and said other petitioners herein, in contravention of the prohibition of the Constitution of the United States, Article 1, Section 10.

Assignment III.

The Supreme Court erred in giving such effect to the 1912 statute of limitation as prevents the Board of Commissioners of the Atchafalaya Basin Levee District from fulfilling its pre-existing and continuing contractual obligation to the Atchafalaya Land Company, Limited, and to the

Schwing Lumber & Shingle Company, Limited, thereby depriving said named companies of their property and property rights in and under certain valid and pre-existing contracts of sale, without due process of law, and in contravention of the Constitution of the United States, Amendment XIV, Section 1,

DISCUSSION OF ASSIGNMENT OF ERRORS.

The consideration of the propositions involved in the foregoing, invite preliminarily a consideration of the contract declared to have been impaired by the statute of Limitation. The Grant from the State to the Board of Commissioners reads in part: "All lands now belonging, or that may hereafter belong to the State of Louisiana and embraced within the limits of the Levee District as herein constituted, shall be, and the same are hereby given, granted, bargained, donated, conveyed and delivered unto said Board of Commissioners whether said lands or parts of lands originally granted by the Congress of the United States to this State, or whether said lands have been, or may hereafter be forfeited to or bought in by or for, or sold to the State," etc. There is provision for a period of redemption as to tax lands; and the act continues: "After the expiration of said six months it shall be the duty of the Auditor and Register of the State Land Office in behalf of and in the name of the State, to convey to the said Board of Levee Commissioners, by proper instrument of conveyance the lands hereby granted or intended to be granted and conveyed to said Board; whenever from time to time, said Auditor and the Register of the State Land Office or either of them, shall be requested

to do so by said Board of Commissioners, or by the President thereof, and thereafter said president of said Board shall cause said Conveyance to be properly recorded in the Recorder's office of the respective parishes wherever said lands are, or may be located, and when said conveyances are so recorded, the title to said land, with the possession thereof shall from thenceforth vest absolutely in said Board of Levee Commissioners, its successors or grantees," etc.

The section further provides: "Said Board of Levee Commissioners shall have the power and authority to sell, mortgage, pledge or otherwise dispose of said lands in such manner and at such times and for such prices as the said Board shall deem proper," etc. Under this authority the Board sold to Wisner & Dresser under the contract already quoted.

It is needless for us to undertake a discussion of the meaning of this contract. The Supreme Court of Louisiana has repeatedly interpreted it and we review the Jurisprudence on the subject.

It is well to be advised that in 1890 and 1892 the General Assembly organized several Levee Districts under the control of Boards, and in the precise language quoted from Act 97 creating the Atchafalaya Basin Levee District, made grants to the respective Boards of Commissioners.

The grant came up for interpretation in what is known as the Cross Lake Case, decided in 1909, reported in 123 La. Reports, page 208.

In that case, the State filed suit contending that a certain lake was not included in the grant, but that if it were, there was no transfer by deed through the Auditor and Register of the State Land Office to the Board, and until that was done the Board had no title, and consequently had none which it could transfer to the Cross Lake Shooting and Fishing Club.

The present Chief Justice Monroe rendered the decision, holding that the Board had "acquired no title to the lands in dispute under the Act of 1892, because no deed of conveyance thereto was ever executed by the Auditor and Register, or either of them, and, of course, no such deed was ever recorded," etc.

The syllabus sets forth the proposition adversely to present Petitioners so fully, that we quote it: "Under Act No. 74, page 95 of 1892, and Act No. 160, page 242 of 1900, the grant of lands made by the State to the Board of Commissioners of the Caddo Levee District is not a grant *in presenti*, but is intended to vest in the grantee a disposable title only when proper instruments of conveyance executed by the State Auditor and Register of the State Land Office, are recorded in the parishes where the lands lie. Hence a sale of such lands by the Board prior to the registry of conveyance is void, and the party attempting to purchase is liable to eviction at the suit of the State."

This is a clear cut decision adverse to the contention of present plaintiff; and if it had continued the jurisprudence of this State, there would be no ground for petitioner to stand in court. **The reverse has become the fixed jurisprudence;** which, with the exception of the instant case, is in accord with the line of decisions hereinafter to be quoted, anterior to the Cross Lake Case. This case was an error from which the Supreme Court speedily retreated. We have begun our discussion with it because it is the first adverse decision; and because after a long line of decisions opposed to it, it is revived by Mr. Justice O'Neil in support of his present opinion.

In that case Justice Provosty dissented. Quoting from his opinion in the 40th Southern Reporter, page 895, we read:

"The only serious question is as to whether the State did not, by operation of the statute itself, convey to the Levee Board an interest in the land such as the Levee Board on its part could convey. Differently from private persons, the State may by the mere expression of her will, convey title to her property. 26 Am. and Eng. Enc. of Law, 423 *Strother vs. Lucas*, 37, U. S. 410; 9 L. ed. 1137. Now the statute reads: 'That the lands shall be and are hereby conveyed and delivered.' It is not only that they 'shall be' but that they 'are hereby.' They are not only granted, but 'hereby conveyed and delivered.' If these words do not import a present conveyance and delivery, they import nothing.' "

The dissenting opinion discusses the creation of the Levee Board as a body authorized to receive and to give title, and proceeds:

"It created this Levee Board and endowed it with the faculty of receiving and holding property and making contracts with reference thereto. This Board so created was as fully qualified to receive by donation from the Legislature as any ordinary corporation or person. The fact, therefore, that this Board was the creature of the Legislature, and its mere agent, wholly subject to its control, does not detract one iota from its status as a body capable of receiving and holding property and making binding contracts with reference thereto. The question still continued to be, and is, whether or not a present interest was intended to be conveyed to the Board. If yea, then the Board has a right to make contracts with reference to the interests so conveyed. If nay, then the Board had in the property no interest with reference to which it could contract. I think the State is bound by the contract which the Levee Board made with reference to this property."

While the case quoted above is based upon the identical contract between the State and the Caddo Levee Board as exists with the Board of Commissioners of the Atchafalaya Basin Levee District, it was still not an interpretation of the specific contract under present consideration.

But the specific contract has been interpreted several times. The first case is upon the petition of the Board of Commissioners, in whose name mandamus proceedings were brought to compel the Auditor and Register to make title under the grant of 1890. It was urged that the grant by the State to the Board of Commissioners was repealed by Act 215 of 1908, which required State Lands, inclusive of those granted by the State to Levee Boards, to be sold at auction to the highest bidder. The Court said:

"Considering the remaining ground relied on by respondents, we do not find that Act 215 of 1908 has any application to land which has been granted by the State to its Levee Boards, save that it makes the same provision with regard to the sale of such lands to would-be purchasers as with regards to lands not so granted. It is said that the grant to relator did not vest title until supplemented by acts of conveyance to be executed by the Auditor and Register. It has, however, several times been held by this Court that such grants, at least operate to withdraw the lands affected by them from the market. *McDade vs. Bossier Levee Board*, 109 La. 627; 33 South 628; *Hell vs. Levee Board*, 111 La. 913; 36 South 976; *Hartigan vs. Weaver*, 126 La. 492, 52 South 674. The Levee Boards are mere State agencies, and as between them and the State, the State is at liberty to cancel donations of land, made to them, whether acts of conveyance have been executed or not. But the donation to relator has not been cancelled and the unrepealed act in

which it is contained, after declaring that 'All lands, now belonging, or that may hereafter belong to the State of Louisiana, and embraced within the limits of the Levee District, as herein constituted, shall be, and the same hereby are, given, granted, bargained, donated, conveyed and delivered unto the said Board of Levee Commissioners and, after providing that a delay of six months shall be allowed for the redemption of lands which may have been acquired by the State at tax sales, further declares that: 'After the expiration of said six months, it shall be the duty of the Auditor and the Register to convey to said Board, by proper instruments of conveyance, the lands hereby granted or intended to be granted to said Board, whenever, from time to time, said Auditor and said Register, or either of them, shall be requested to do so by said Board or by the President thereof, and, thereafter, said President shall cause said conveyances to be properly recorded in the respective parishes where said lands are or may be located, and, when said conveyances are so recorded, the title to the said land, with the possession thereof, shall, from thenceforth, vest absolutely in said Board,' etc. It was therefore within the contemplation of the act that the donation should stand and remain open to acceptance and confirmation indefinitely, and the request which the Board now makes of the Auditor and Register is as well within the law as though it had been made immediately upon the expiration of the six months allowed the former owner and tax debtor within which to redeem." 142 La. R. 111.—It is evident that the six months delay, within which title deed could not be executed was to secure to the owner of land sold for taxes, the right to redeem.

It will be seen, then, that what Wisner and Dresser bought from the Atchafalaya Levee Board was the right which the Levee Board had to the lands donated and the

right to have title made at any time. Wisner and Dresser were substituted to all of the rights which the Levee Board had acquired and which it had the right to sell. Consequently, Wisner and Dresser acquired the right (which the Court says was within the contemplation of the act), to have the donation stand and remain open for acceptance and confirmation indefinitely, and that the request for title deed is as well within the law to-day as if it had been made at the inception of the contract.

It is worthy of note that this decision was rendered June 11th, 1917; and that it refers, in support of the proposition under discussion a line of decisions which were rendered anterior to the Cross Lake Case, and adverse to the doctrine announced in that case. This contract received a further interpretation in the case of *Atchafalaya Land Company, Ltd., vs. Grace*, reported in the 143 La. Reports, p. 637 and decided June 29, 1918. The Register of the Land Office had undertaken to sell under the provisions of Act 215 of 1908, lands within the Atchafalaya Basin. The Atchafalaya Land Co. Ltd. enjoined upon the ground that those lands were included in the grant made by the State to the Levee Board, and that they were included in the sale from the Levee Board to Wisner and Dresser. There was no transfer from the state to the Levee Board, and there was no transfer from the Levee Board to Wisner and Dresser; but the Atchafalaya Land Company representing Wisner and Dresser (as is recognized to be its status, by the Court, in this case) enjoined the sale upon the ground that it had the right to have title made to these lands. The decision is likewise rendered by the Chief Justice who had decided the Cross Lake Case. He therefore reiterated his reversal of the opinion originally expressed by him.

"The contention on behalf of defendants is that pursuant to the donation declared by the Act of 1890, though the Board of Commissioners might demand a title to the tract in question, and though for valuable consideration, the Board, by two acts, respectively, promised to convey, and did convey, the tract in question to plaintiff's author, that plaintiff cannot exercise that right because by Act No. 215 of 1908, the General Assembly declared all applications for entry or purchase of public lands of the State, then on file, to be null, and prescribed a particular method whereby they should thereafter be sold. This Court has, several times, had occasion to consider the effect of the grants contained in Act No. 97 of 1890 and similar statutes, and of Act No. 215 of 1908, when construed therewith, and has held the statute last mentioned to be inapplicable to claims for lands granted under those first mentioned or under contracts with the grantee; that in effect, the State had parted with the lands donated to the Levee Board; that they were not thereafter open to entry as public lands of the State; and that having been subjected to the disposition of the Levee Boards, and contracts made by these Boards with reference to them, could not be affected by subsequent legislation."

The Court refers to a number of authorities, and says that:

"The most recent case upon the subject is the State *ex rel Atchafalaya Basin Levee Board vs. Capdeville, Auditor*, 142 La. 111, 76 South, in which it was held, quoting from the syllabus, that 'Act No. 97 of 1890 contemplates that the donation of land to the Atchafalaya Basin Levee Board therein contained should stand open indefinitely for acceptance, and that the lands should be conveyed to the Board

from time to time, as requested by it, and that the Act is unaffected by Act No. 215 of 1908; hence the request which the Board now makes of the State Auditor and Register of the State Land Office to execute conveyances of the land so donated is as well within the law as it has ever been, and, as the ministerial duty rests upon those officers to comply with that request, mandamus will lie to compel such compliance.' Applying that rule to the instant case, we can discover no appreciable difference between the position of the plaintiff herein standing in the place and exercising the rights of the Board of Commissioners (which by its contract it is expressly authorized to do) and the Board itself, if it were before the Court, instead of its transferee; and as the Board (as between it and defendants) would have the right to demand a title to the land in dispute, so its transferee has the right to protect the title acquired from the Board by staying defendants in their attempts to sell the land to a third person." We invoke here the rule of law, that the judicial interpretation of a statute upon which a contract or the remedy to enforce it is based, becomes a part of the contract itself. Enc. U. S. Sup. Ct. Reports, Vol. 6, page 774.

Now we come to the strongest decision of them all for the reason that it recognized a sale by the Levee Board of a tract of land without any deed from the State, upon the assumption that the Board had title by the grant; that no one could impair or abrogate its title, and hence the failure to obtain deed was no hindrance to the rights of ownership vested by the grant. It is reported in 146 La. Reports, page 962, *State Ex. Rel. Board of Com. of Caddo Levee District et. al. vs. Grace Register of State Land Office*, decided June 1919.

It is worthy of note that the decision is by Mr. Justice

O'Neil who rendered the opinion in the instant case, which it is respectfully submitted, is entirely at variance with his opinion in the case being quoted, as well as subversive of the Jurisprudence of this State, on the issues here presented.

In the case referred to, the State in identical language to the grant to the Atchafalaya Levee Board (Sec 11, Act 97 of 1890) granted to the Caddo Levee Board (by Act 74 of 92 amended by Act 160 of 1900) the swamp lands within its confines. The method of securing deed and recording the same are identical. We quote at page 963: "By Section 9 of the statute creating the Levee District, the Act No. 74 of 1892 (page 98) all lands then belonging or that might thereafter belong to the State and embraced within the limits of the District were granted to the Board of Commissioners. And, by the same section of the statute, it was declared the duty of the State Auditor, and of the Register of the State Land Office, on behalf and in the name of the State, to convey to the Board of Commissioners by proper instruments of conveyance, all lands thereby granted or intended to be granted and conveyed to the Board, whenever, from time to time either the Auditor or Register should be requested to do so by the Board of Commissioners or the President of the Board. Sections 1 and 9 of the Act 74 of 1892 were amended and re-enacted by Act No. 160 of 1900 (page 212) but not so as to affect the status of the land in contest.

"No certificate or instrument of conveyance of the land in question was issued by the State Auditor or Register of the State Land Office to the Board of Commissioners of the Levee District, nor was a certificate or instrument of conveyance requested by the Board or by any officer of the Board, until the defendant Mrs. Douglas had obtained and recorded a patent from the State purporting to convey the land to her."

May we not accentuate the similarity of the facts up to this point? We quote further:

"Assuming ownership of the land, the Board of Commissioners sold it to one James L. Gilliam in January 1901 by warranty deed which was promptly recorded in the conveyance office of the parish where the land is situated. H. H. Huckaby, who with the Board of Commissioners is co-plaintiff or relator in this suit holds title through mesne conveyances from James L. Gilliam.

Mrs. Douglas obtained her patent on the 18th of April 1918. Nine days later, the Board of Commissioners requested the Register of the State Land Office to issue a deed of conveyance of the land to the Board. The Register replied that the land was not subject to transfer to the Levee Board because a patent had been issued to Mrs. Douglas; the records of the land office having shown the land as vacant when she made application for it."

Note the sustained similarity. The state granted the lands to the Atchafalaya Levee Board by identical language. The Levee Board sold to Wisner and Dresser all it had acquired with the obligation on the Board to secure deed for its vendee.

After the grant to the Atchafalaya Levee Board the Register patented the land to Pharr & Williams as though it belonged still to the State.

Let us note the conclusion of the State Supreme Court (page 966). "When the State had, by statute creating the Caddo Levee District, agreed to transfer to the board any and all the lands within the district, the officers of the land department had no authority to issue a patent to any one else for land within the district. Any land in the District

appearing vacant on the records of the land office, *was subject at all times* (Italics ours) to be claimed by the Board of Commissioners so long as the grant was not repealed by Legislature Act (See *Hall vs. Board of Commissioners of Bossier Levee Board*, 111 La. R. 913; *Hartigan vs. Weaver*, 126 La. R. 492; *State Ex. Rel. Atchafalaya Basin Levee District vs. Capdeville Auditor*, 142 La. R. 111; *Atchafalaya Land Co. vs. Grace*, 143 La. R. 637). The ruling in *McDade vs. Bossier Levee District*, 109 La. 625, 33 South 628 as modified by the opinion delivered on rehearing, is in accord with the opinion expressed here; and we find nothing to the contrary in *State vs. Cross Lake S. & F. Club*, 123 La. 208, 48 South 891."

There was a judgment annulling the patent and ordering deed to be made to the Board, and that was affirmed.

We have quoted decisions which specifically sustains the issues presented, but let us furnish others which reinforce them, and which constituted an unwavering jurisprudence anterior to the break in the Cross Lake Case. And that break had been mended. We quote from *McDade vs. Bossier Levee Board*, 109 La. R. 640.

"After the State had, by Act No. 89 of 1892, declared its purpose of donating the lands it owned within the limits of the Bossier Levee District to the Board of Commissioners of said Levee District, for the use and benefit of the District, it was not competent for the plaintiffs to acquire any rights in and to any portion of the lands so belonging to the State, and included within the limits of the District, under the terms of Act No. 21 of 1886, granting pre-emption rights to actual settlers; and their going upon the lands in question under the circumstances is held to have been in bad faith."

We quote further from *Hall vs. Board of Commissioners*, 111 La. R. Page 925: "She further avers, in the alter-

native, if it be found that she is not the owner of said land, by accretion, alluvion, etc., and if it be held that she and her authors did not acquire said strip in the manner afore said, and that the same was the property of the State of Louisiana, then that by Act No. 21 p. 31 of 1886 the Legislature gave to those in possession of state lands the right to enter the same by preference over all others, at the legal price of 75 cents per acre, and that long prior to the passage of Act 89 page 113 of 1892, purporting to grant certain State lands to said defendant, and at the time of the passage of said act, and ever since, and now the plaintiff and her authors were and are in possession as owners of said strip of land, and had and have a vested legal right to purchase said land at said price, etc."

"The evidence does not sustain the allegation as to the date at which the plaintiff took anything like actual possession of the land in question, and we adhere to the view expressed in the McDade Case, that after the passage of Act No. 89, p. 113 of 1892 it was not competent for persons to acquire any rights to lands within the limits of the Bossier Levee District, under Act No. 21, p. 31 of 1886, granting pre-emption rights to actual settlers."

In the case of *Lattier vs. Bossier Levee Board* reported in the same La. Rep. page 927 the same reasons were adopted.

We refer further to *Hartigan vs. Weaver*, 126 L. R. page 491. In that case issue was made that "under the terms of the act of the Legislature creating the Board of Commissioners of the Lake Borgne Basin Levee District, the land did not vest in the Board until deed signed by the Auditor and Register was duly recorded—that the lands were not owned by the State." And the contention was further made that since the adoption of Act 215 of 1908 the

State and Levee Boards could sell lands only at public auction.

Before the Act of 1908, that is, in December 1903, the Levee Board had by resolution recognized an option in the land as having been granted by it. We quote: "The lands were embraced in the option and agreement of December 1903 between the Levee Board and John F. Miller and became Miller's in fee simple by sale before referred to, made to him by the Board in 1909. These lands at said date had been selected by the Federal Government under the provisions of the Swamp Land Grant of Congress of 1849 and 1850.

The first objection of defendant is that the option or promise of sale was given at a time when the land title was not in the Levee Board. It was owned by the Federal Government, it is contended. They had been selected by the State, but the selection had not been approved at the date of the promise to sell, and that in consequence, the Board's action was *ultra vires*.

We can only say: Lands granted under the swamp land grants are granted *in praesenti*, subject, it is true, to the approval of the Secretary of the Interior. It was the land of the State. The point presented is, whether it was a grant *in praesenti*? We decide that it was, and that is the extent of our decision. It was not the land of the United States from the date of the grant, except to the extent necessary for it to pass absolutely under the control and dominion of the grantee. The title remained in the Government in a sense, subject to the laws of the State as soon as it inured to the State by selection as swamp land. When it passed from the United States to the State Government, it became subject to the laws of the latter, and the title relates back

to the date of the grant in 1849 and 1850. This brings us to defendant's ground of objection that the title to the land under the statute did not pass to the Board of Commissioners for the Levee District until the deed signed by the Auditor of the State and by the Register of the State Land Office was recorded in the Conveyance records of the parish where the land was situated.

The mandate of the law-maker and the authority vested in the Board are that the president shall have the Conveyance properly recorded in the Recorder's office of the respective parishes in which the land is located, and when said conveyances are so recorded, the title to said land passes to the Levee Board.

When the land was sold by the Levee Board in 1909, the law had been complied with. Acts in due form, properly signed by the Auditor and Register of the State Land Office had been duly recorded in the office of the Clerk of the Parish. The Board had given an option or promise of sale to plaintiff's ancestor in title. He had paid the amount required to make good this option. The Board subsequently consented, as before stated, to the transfer of this option by Estopinal to plaintiff. The land was vested in the Board. The Board had authority to buy and sell property, to make and execute all contracts. Section 7, p. 21, Act No. 14 of 1892.

The defendant's contention further is, that the General Assembly at its session in 1908 enacted Act No. 215 of the statutes of that year. The act provides for the sale of all lands owned by the State or by any of the Levee Boards at public auction, after due advertisement. There had been a prior contract made, and under it the purchaser had acquired a right, to which the Board gave its recognition by its own act. The new method of disposing of the public

lands of the State, under Act No. 215 did not divest the right acquired under the option. A similar question was decided by the Supreme Court of the United States—*Pennoyer vs. McConnaughy*, 140 U. S. 1, 11 Sup. Ct. 699, 35 L. Ed. 363.

The land commissioners, in the cited case above, had enforced a similar contract, which the parties attacked on grounds similar to those here. The Court accepted the Construction placed upon the Act by the Land Commissioners. The cited Act above, No. 215 of 1908 has application to future sales and to lands not subject to contract as this was. It was a subsisting valid contract."

We call attention to the fact that while the act of sale was passed after the Act of 1908, the promise of sale was in existence long before, and under Article 2462 of the Civil Code was the equivalent to a sale. So the Levee Board had entered into a contract to sell the land before it secured title deed, but as it had the right to require deed to be made to it, and as it had the right to sell, the promise to sell vested a right in the assignee. The subsequent act of the General Assembly could not divest this right, and the State Supreme Court so held.

The situation is presented then, that the State Court has fixed in the Jurisprudence the interpretation of the contract between the State and the Board of Commissioners.

(a) It was a grant *in praesenti* which took title from the State and vested it in the Board with the right in the Board, at any time to call for the execution of the deed. In the language of the Court interpreting this very contract (State Ex Rel Atchafalaya, etc. vs. Capdeville, 142 La. 111) "*it was therefore within the contemplation of the act that the donation should stand and remain open to acceptance and confirmation indefinitely, and the request which the*

Board now makes of the Auditor and Register is as well within the law as though it had been made immediately upon the expiration of the six months allowed the former owner and tax debtor within which to redeem." Italics ours.

(b) After the grant had been made, no state officer acting for the State could issue adverse patent to the land.

Notwithstanding this judicial interpretation of the contract, Mr. Justice O'Neil in the instant case holds that a statute passed in 1912 limiting to six years the right of action to annul a patent does not impair the obligation of the contract, or deprive a vested right without due process of law.

Twelve years before this statute of repose was enacted the Levee Board, in the exercise of its right under the grant, had sold all it had acquired to Wisner & Dresser, the authors of present plaintiffs, the Atchafalaya Land Co. and the Schwing Lumber & Shingle Co. So the question of the State revoking a grant to its creature the Levee Board is not at issue.

We have noted that the State Supreme Court predicated its judgment only on the Federal question submitted. The issues under exclusive State Jurisdiction, it found with Petitioners. We come now to the discussion of the decision of the State Supreme Court in the instant case. May we not preface its discussion by quoting again the principle announced by Mr. Justice O'Neil which he destroys in the instant case. We find it in *State Ex. Rel. Caddo Levee District vs. Grace Register et als*, quoted above, and decided so recently as June 1919.

"When the State had, by Statute creating the Caddo Levee District, agreed to transfer to the Board, any and

all lands within the District, the officers of the Land Department had not authority to issue a patent to any one else for land within the District. Any land in the district, appearing vacant on the records of the Land office, was subject at all times to be claimed by the Board of Commissioners, so long as the grant was not repealed by legislative act. 145 La. R. 966."

Now let us consider the reasoning which led Mr. Justice O'Neil to a different conclusion in the instant case. We quote:

" The **vested right**, which plaintiff's counsel contend would be divested if the statute of limitation should prevail in this case, is the right which the Board of Commissioners had under section 11 of Act 97 of 1890, to demand and obtain from the State Auditor and Register of the Land Office an instrument of Conveyance of the land now in controversy. In other words, the **Obligation of the contract** which plaintiff's counsel argue would be violated if the statute of limitation should prevail in this case, is the obligation incurred by the State, by the Act of the legislature creating the Levee District to transfer to the Board of Commissioners the lands now in controversy, viz:

After the expiration of said six months, it shall be the duty of the Auditor and the Register of the State Land Office, on behalf and in the name of the State, to convey to the said Board of Commissioners, by proper instruments of conveyance the lands hereby granted or intended to be granted and conveyed to said Board, whenever, from time to time, said Auditor and Register of the State Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners, or by the President thereof; and

thereafter said President of said Board shall cause said Conveyance to be properly recorded in the Recorder's office of the respective parishes wherein said lands are located. When said Conveyances are so recorded, the title to said land, with the possession thereof, shall thenceforth vest absolutely in said Board of Levee Commissioners, its successors or grantees; said lands shall be exempted from taxation after being conveyed and while they remain in the possession or under the control of the said Board."

The Court then comments: "The legislature did not, in the act creating the Levee District put a time limit upon the right of the Board of Commissioners to demand instruments of conveyance of the lands conveyed or intended to be conveyed by the Statute, and it is well settled that, after the State was by act of the Legislature, obligated to transfer to the Board of Commissioners all lands within the Levee District, the officers of the Land Department did not have the authority to issue a patent to anyone else for land within the district. See *State Ex. Rel. Board of Commissioners of Caddo Levee District vs. Grace Register*, 145 La. 83 South 206 and the list of decisions there cited." We may comment that this is in line with the jurisprudence quoted by us herein before and interpreting this very grant. But the Court continues: "But it is also well settled that the lands intended to be conveyed by the Statute creating the Levee District remained under the control of the Legislature so long as the absolute and indefeasible title was not vested in any individual or private corporation. In *State vs. Cross Lake Shooting & Fishing Club* and again in *State Ex. Rel. Atchafalaya Basin Levee Board vs. Capdeville, Auditor*, 142 La. 111, 76 South 324, it was held that the legislature retained the power to revoke the donations made by

the Statute creating the Levee District, as to any land for which an instrument of conveyance had not been issued to the Board of Commissioners."

As to the Cross Lake Case, we have already shown that it was at variance with the anterior Jurisprudence, was rejected in the subsequent Jurisprudence, including the cases interpreting this very contract, and more particularly in the most recent case decided by Mr. Justice O'Neil, and referred to above. There is no objection to the principle that the State has the right to revoke a grant to a Levee Board so long as the Levee Board has not transferred the land to a third person; but it is not the case here. If we refer to the other decision referred to by Mr. Justice O'Neil, we find that it is the very opposite to his position. It is true that it recites the uncontested proposition that "the Levee Boards are mere State agencies, and as between them and the State, the State is at liberty to cancel donations of land made to them, whether acts of Conveyance have been executed or not." But it quotes the language of the grant, and concludes that: "It was therefore within the contemplation of the act that the donation should stand and remain open to acceptance and confirmation indefinitely, and the request which the Board now makes of the Auditor and Register is as well within the law, as though it had been made immediately upon the expiration of the six months allowed the former owner and tax debtor with which to redeem."

This very decision is so contrary to the principle announced by the State Court in the instant case, as to make reference to it, to sustain its decision, remarkable. We again recite its declaration as affecting the very contract under consideration. "It is said that the grant to relator did not vest until supplemented by acts of conveyance, to be executed by the Auditor and Register. It has, however,

several times been held by this Court that such grants at least operate to withdraw the lands affected by them from the market." The Court overlooked the case of *Hartigan vs. Weaver*, quoted above, which specifically held that where the Board had contracted away the land granted it, legislation affecting the disposal of public lands, could not divest the right to require title deed under the circumstances recited.

The paragraph of the Court's opinion under analysis first states that the State officer had no authority to issue a patent after the grant to the Levee Board. This is in accord with the jurisprudence. Second, that while the above is true, the land intended to be conveyed remained under the control of the legislature until an indefeasible title has been passed to a third person.

This is likewise in accord with the Jurisprudence; but there is no relation between these principles and the conclusions of the Court; for, there is no act which revoked the grant either before or after the transfer by the State's grantee to Wisner & Dresser; nor could the State have withdrawn the grant after the Levee Board had sold its rights to third parties. In the decisions already quoted, the State Supreme Court repeatedly declared that legislation after the grant by the State to the Board of Commissioners, purporting to provide for the sale of State lands, did not apply to lands granted by the Act 97 of 1890.

Nor can these principles sustain the State Court when it undertakes to abridge by a statute of limitation passed twelve years after the Board had sold to Wisner & Dresser, the unlimited term in which they or their assigns had to require title deed.

But the State Court did not consider that there had been any revocation of the grant. Forgetful or unmindful

of the reiterated interpretation of the contract to the effect that the grantee or its assignee had an **unlimited time** in which to secure title deed, the Court seems to look upon the statute of 1912 as some grant to the Levee Board. It states: "Far from revoking the donation or grant of any land for which the Board of Commissioners might have demanded an instrument of conveyance, the Act 62 of 1912 allowed the Board six years in which to demand instruments of conveyance, even of lands for which patents had been issued to other parties."

If the effect of the Statute complained of is to make shorter the term allowed by the contract to require deed, it changes the terms of the contract; it abridges a term granted indefinitely to one of six years; and still the court says it was a grant of six years to perfect its title. It did not need the grant of six years. It has by contract unlimited time.

The State Court holds further, that the statute of 1912 is not violative of the Federal Constitution for two reasons. We quote: "The first reason is that a statute creating a state agency and investing it with authority to dispose of public lands is not a contract within the meaning of the clause forbidding the enactment of laws impairing the obligation of contracts. The only legislative grants that are protected by the clause forbidding the enactment of laws impairing the obligation of contracts are grants made to or for the benefit of individuals or private corporations, or grants on the faith of which and according to the terms of which an individual or private corporation has acquired title." Authorities referred to.

Without pausing to discuss the proposition, it is sufficient to say that the instant case is covered by the very exception to the rule stated by the court. The Levee Board had

the statutory authority to sell what was granted to it, and did so before the statute impairing the contract was enacted.

We read further the statement :

"The stipulation in the statute creating the Levee District that title to the lands should not vest absolutely in the Board of Commissioners until the Board should obtain an instrument of conveyance, and have it recorded in the Parish where the land conveyed was situated, made it impossible for any individual or private corporation to obtain from the Board an indefeasible title to any land before the issuance and registry of such instrument of conveyance to the Board of Commissioners. In fact, the Levee Board contract with Wisner and Dresser did not purport to convey title to any land for which the Board had not obtained an instrument of conveyance from the State Auditor or Register of the Land Office. The obligation incurred by the Levee Board was merely to transfer to Wisner & Dresser all of the lands for which the Board could obtain instruments of conveyance by virtue of the Statute creating the Levee District. And, until such instruments of conveyance were obtained by the Board, the lands remained under legislature control by the State, as well after as before the Board of Commissioners contracted with Wisner & Dresser. The legislature therefore had the power, at any time, to limit the time within which the Board of Commissioners of the Levee District could lay claim to lands that had been disposed of by the State directly in favor of individuals or private corporations." The conclusion above is not only unsound but is diametrically opposed to the decision of the Supreme Court previously interpreting the contract in a suit brought by the present plaintiff objecting to the sale of a tract of land by

the Register of the State Land Office who assumed to sell it under a statute subsequent to the sale to Wisner and Dresser. The Court by Chief Justice Monroe sustained the right of the present plaintiff to act under the contract and prevent the sale of the land which was subject to his right to require deed to be executed. We have quoted it *supra* under the title Atchafalaya Land Co. vs. Grace. May we not respectfully refer to the grave variance between the principles announced in this case and those announced by the same Justice in the recent case of *State Ex. Rel., etc., vs. Grace*?

He held that the Levee Board and its assignee had the right to sue for the annulment of a patent issued by the Register of the State Land Office in 1918 because the Levee Board had a right to require a deed and the Register could not deprive it of that right. The case is more striking because the Levee Board had sold the land to a third person many years ago, upon the assumption that it had the right to so do, and it was manifestly for the benefit of this person that the Levee Board sought to annul a subsequent patent and to secure a belated deed from the State by means of a writ of mandamus.

It is manifest that while this Honorable Court will seek the construction of State Courts of contracts executed under State grants or otherwise, still where a State Court decides a particular case not only contrary to the established jurisprudence, but contrary to the repeated interpretation given by the Court to the very contract, this Honorable Court will not be led by this vacillation. What is the well established judicial interpretation of the statute and the contract flowing from it, should prevail. Where the question arises as to subsequent legislation impairing a contract, this Court will itself, determine the nature of the contract if necessity arise.

The second reason given by the Court: "Why the constitutional inhibition against giving a statute the retroactive effect of impairing the obligation of a contract is not pertinent to this case is that the statute of repose, Act 62 of 1912, did not divest any one of his vested right, but on the contrary allowed a reasonable time for every one to assert his right."

We have already argued that it is of the essence of the contract that the grantee and its assignees should have unlimited time within which to secure deed. The nature of the lands—wild and swamp in character—was sufficient reason not to require deed to be taken at once. It required time to ascertain what lands were subject to the grant and what were not. The territory embraced a vast area. The same condition prevailed when the State made its grant as when it received the same lands by grant from Congress. The grant embraced all lands susceptible to be granted; and the issuing of patent or deed but identified special tracts as having been included in the grant. When so identified, the grant became perfect as of the date of the grant. *Wright vs. Roscherry*, U. S. Sup. Ct. Rep., Vol. 7, page 989.

Second Assignment of Errors.

"The Supreme Court of Louisiana erred in deciding and adjudging that legislative Act No. 62 of the General Assembly of 1912 could constitutionally operate, either directly or by necessary effect, to impair the obligation of a lawful contract of sale and warranty made by the Board of Commissioners of the Atchafalaya Basin Levee District, an agency of the State of Louisiana, and its grantees, immediate or mesme, such contractual obligation being a continuing one,

running in favor of other petitioners for writ of error herein, to-wit, the Atchafalaya Land Co. Ltd., the Schwing Lumber & Shingle Co. Ltd. in giving such effect to said legislative act as impairs the obligation of the contract existing between the said Board of Commissioners and said other petitioners herein in contravention to the prohibition of the Constitution of the United States, Article 1, Section 10."

The statute in question, Act 62 of 1912 reads as follows:

"All suits or proceedings of the State of Louisiana, private corporations, partnerships or persons, to vacate and annul any patent issued by the State of Louisiana, duly signed by the Governor of the State and the Register of the State Land Office, and of record in the State Land Office, or any transfer of property by any sub-division of the State, shall be brought only within six years from the issuance of the patent; provided, that suits to annul patents previously issued shall be brought within six years from the passage of this Act."

The Plaintiff and Intervenors have attacked this act upon the grounds that it was violative of the Federal Constitution (Section 10 of Article 1), in that it impaired the obligation of a contract; and the 14th Amendment, in that it deprived the parties of property without due process of law.

The theory of the exceptor is that the statute is remedial, and that it is within the province of the Legislature to change remedial laws at its pleasure; and, more particularly, that it may change statutes of limitations so as to affect even existing contracts, although it abridges the time within which suits upon contracts may be filed, provided it grants a reasonable time after the adoption of the law for the filing

of suit. We would accede to that as a general proposition.

What counsel fails to note is, that there is a material difference in the change of a law affecting remedies alone, and one, which under the pretext of changing a remedy would change the nature of a contract.

Cooley Const. Limitations 402 et seq. gives the rule, but embraces the exception which we quote:

"If any subsequent law affects to diminish the duty or to impair the right, it necessarily bears on the obligation of the contract, in favor of one party to the injury of the other; hence, any law which in its operation amounts to a denial or obstruction of the rights accruing to a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution."

It is manifest that what is meant is that a subsequent law cannot delve down into a contract and write into it something which was not in it, or take out something which was written in it. The State Supreme Court having interpreted the particular contract as one granting the Plaintiff an indefinite time to require title deed, this time cannot be abridged without the impairment of an essential of the contract. Elaborating the principles here announced, we direct attention to Black's Constitutional Law, 2nd Ed., Par. 271-272-274.

In paragraph 284 we find the principle upon which counsel for defendant relies so implicitly, with the modification applicable to this case, which counsel for defendant has absolutely failed to observe. We quote:

"There is a distinction between the obligation of a contract and the remedy for its enforcement. Whatever per-

tains merely to the remedy may be changed or modified, at the discretion of the Legislature, without impairing the obligation of the contract, provided the remedy is not wholly taken away, nor so hampered or reduced in effectiveness as to render the contract practically incapable of enforcement. The remedy cannot be wholly abolished or denied to the parties. For to withdraw all legal means of enforcing a contract, or obtaining satisfaction for a breach of its terms, is to withdraw that sanction of the law which constituted a part of the obligation of the contract. The State is bound to provide a remedy for such cases. But it is not of the obligation of the contract that the remedy shall remain the same when the contract was made. But if the parties to a contract include in it in express terms, the remedy to be sought upon its breach, or the means to be used for securing its performance, subsequent legislation changing the remedial process they have agreed upon is as to them inoperative."

See Watson, on the Constitution of the United States, Vol. 1, beginning page 788.

The same authority goes on to give various illustrations, and among the remedies subject to change is the statute of limitation; provided, of course, that it does not impair the obligation of a contract. Continuing, on page 800, we read as to the test of impairment:

"One of the important tests of the impairment of the obligation of a contract is whether its value has been diminished by legislation, for it is not to be impaired at all, says the Constitution, and therefore it is not a question of degree or manner, or cause, but it is a question of encroachment in any respect on its obligation dispensing with any part of its force."

One of the most lucid expositions of the proposition out of our State jurisprudence comes from the Chief Justice of the Texas Supreme Court in the case of the *International Building and Loan Association vs. Hardy*, reported in *Lawyers' Reports Annotated*, Book 24, beginning at page 284. The proposition involved in that case is as follows:

"Plaintiff claims title to lands in Bexar County under a deed of trust executed by appellee and wife on April 18, 1885, the sale by the Trustee having taken place on October 9, in 1890, in Bexar County, appellant being the purchaser. The Trustee's deed was objected to when offered in evidence on one ground only, viz: 'Because there was no evidence that advertisement was made by posting notice of the time and place of sale, as in Sheriff's sales, in three public places in the county, one of which being the Courthouse door,' which objection was sustained.

"Q. Did the Act of March 21, 1889, entitled 'An Act to prescribe the place and time of sale of all real estate thereafter to be sold under power conferred by any deed of trust or other lien,' have the effect of requiring compliance with its provisions in cases of sales thereafter made under a power, where the contract conferring the power had been executed prior to said act, and provided differently in respect to the sale?

"The act referred to required such sales 'to be made in the county in which such real estate is situated, notice shall be given as now required in judicial sales, and such sales shall be made at public vendue between the hours of 10 o'clock A. M. and 4 o'clock P. M. of the first Tuesday in any month.' "

The Court then explains the purposes of this general act regulating the time and place of sales under executions or other judicial process.

The main proposition in that case similar to that involved in the present case is whether a clause written in a contract, as to the mode of the execution of it, can be changed by subsequent statute. With us it is as to the time of execution. The Court discusses all phases of these propositions, making reference to a long list of decisions, and differentiating the cases in which the statutes are permissible and those in which they are not. We quote only a part of the decision beginning at the middle of the second column of page 286:

"The rule is well stated by the Supreme Court of Pennsylvania: 'But a statute strictly remedial may impair the obligation of a contract, and when this happens the act is unconstitutional. (*Bronson vs. Vinzic*, 42 U. S. 1 Howard 322, 11 Ed. 147). This always happens where the parties make legal remedies a subject of their contract and subsequent legislation conflicts with what they have expressed in their agreement. If they do not prescribe the rule of remedy in their contract, the law-making power is free; but if they do, they become a law to themselves, and the Legislature must let them alone. Stay laws, exemption laws, and limitation laws are ordinarily constitutional, although applied to existing and prior contracts; but the cases in which such laws have been sustained have been cases in which the parties have not contracted about the subject matter to which the laws were applicable. If the thing provided for by the Legislature be within their general competence, and yet be the very thing expressly excluded by a particular

contract, it is plain that, as to the parties to that contract, the law is unconstitutional and void, because it impairs the obligation of their contract.'

Billmeyer vs. Evans, 40 Pa. 327.

To the same effect are the following decisions:

Brietenbach vs. Bush, 44 Pa. 318, 84 Am. Dec. 442.

Lewis vs. Lewis, 47 Pa. 127;

Poole vs. Young, 7 T. B. Mon. 588;

Boyce vs. Boyce, 27 Minn. 373;

O'Brien vs. Krenz, 36 Minn. 138.

The Court concludes as follows:

"When parties, looking to all the facts bearing on their respective interests, make a contract whereby a specific limit, not given by law, is secured for enforcement of right, courts ought not to inquire as to the extent of injury which may result if a law subsequently enacted and affecting the remedy be given effect, for such legislation impairs the obligation of contract, takes away vested rights, and is therefore prohibited by the Constitution." This case was referred to approvingly by the United States Supreme Court in *Wilson vs. Standefer*, 22 Sup. Ct. Rep., page 388, in support of the proposition announced by the Court that a specific remedy provided by the contract cannot be changed by law, because it constitutes a part of the contract. See also *Siebert vs. U. S.*, 7 Sup. Ct. Rep., page 1191.

We do not believe that counsel for Defendant would ever presume to urge the proposition that the Legislature would have the right to repeal the grant to the Levee Board so as to affect the rights of third persons acquiring from the

Levee Board under the specific authority given to it to sell and otherwise dispose of the lands. The only contention is that, although the contract provided that the Levee Board and its assignees might have an indefinite time in which to secure deed, the Legislature had the right to shorten that time by remedial legislation which, though general in its scope, is contended to affect the special contract referred to.

In Ruling Case Law, Vol. 6, at page 308, we find:

"The words 'vested rights' appear first to have been used in reference to real estate. This term is defined as 'an immediate fixed right of present or future enjoyment,' and 'an immediate right of present enjoyment or a present fixed right of future enjoyment.' Rights are said to be vested in contra-distinction to their being contingent or expectant. The right is 'vested' when there is an ascertained person with a present right to present or future enjoyment; it is 'expectant' upon the continuation of existing circumstances, such as the right of an heir to inherit property who survives his ancestors, and the ancestor dies an intestate. And finally, a right is contingent when it depends upon the performance of some condition or the happenings of some event before some other event or condition happens or is performed.

"As applied to vested rights which are secured by constitutional guarantees from infringement or impairment, excepting under special circumstances, the term is not to be restricted to any narrow or technical meaning applicable to those words in the law of real property. The words are used as implying interests which it is proper for the State to recognize and protect, and of which the individual could not be deprived arbitrarily without injustice."

It is manifest that as the Supreme Court has decided the Atchafalaya Land Company has a present continuing right to demand the fulfillment of the obligation by the State, any act which says it cannot do so after the expiration of certain limitations is impairing that contract. The contract says there should be no time limit, and so the Court holds, and this subsequent statute says there shall be a time limit. The bare statement of the proposition refutes the contention of exceptor.

There are innumerable decisions sustaining these propositions, but we tender to the Court only a few leading cases.

In the 109 La. R. at page 710, is the case of *Blouin vs. Ledet*. The plaintiff foreclosed on a mortgage executed before the homestead provision of the Constitution of 1898. The defendant sought to invoke the constitutional exemption provided by that Constitution. The Court said:

"Defendant contends that to give them that operation would be only to affect the remedy, and not to impair the obligation itself of the debt nor to divest the mortgage within the sense of the Constitution of the United States. The question as to the impairment of the obligation of contracts has been decided the other way by the Supreme Court of the United States (*Edwards vs. Kearzey*, 96 U. S. 595), and the matter involved being the interpretation of the Federal Constitution, the decision is binding on this Court; and as to divesting attachment and judgment liens, even the courts that have given a retrospective operation to homestead laws have not gone so far as to permit the divestiture of liens."

The Federal decision referred to is one which so thoroughly and completely analyzes the question that we tender it to the Court as embodying all of the principles applicable to the instant case. The syllabus provides that:

"The remedy subsisting when a contract is made is a part of its obligation, and any subsequent law of the State which so affects it as substantially to impair and lessen the value of the contract is forbidden by the Constitution and is void."

⁴ We quote passages of the decision as specially illustrating the particular case at issue.

"The Constitution of the United States declares that 'no State shall pass any law impairing the obligation of contracts.' The contract is the agreement of minds upon a sufficient consideration that something specified shall be done or shall not be done. The lexical definition of 'impair' is 'to make worse'; the diminishing in quantity, value, excellence or strength; to lessen in power; to weaken; to enfeeble; to deteriorate' (Webster's Dictionary). (Obligation is defined to be 'the act of obliging or binding; that which obligates; binding power of a vow, promise, oath or contract,' etc." (Webster's Dictionary).

The Court then gives the Latin derivation of the word, and continues:

"The obligation of a contract includes everything within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it, the contract, as such, in view of the law, ceases to be, and falls into the class of those 'imperfect obligations' as they are termed, which depend for their fulfillment upon the will and conscience of those upon whom they rest.. The ideas of right and remedy are inseparable. Want of right and want of remedy are the same thing."

We quote again from the decision :

"In *Green vs. Bidle*, 8 Wheat 1, this Court said, touching the point here under consideration: 'It is not answer that the Acts of Kentucky now in question are regulations of the remedy and not of the right to the lands. If these acts so change the nature and extent of existing remedies as materially to impair the rights of the owner, they are just as much a violation of the compact as if they overturned his rights and interests.' 'One of the tests that a contract has been impaired is that its value has by legislation been diminished. It is not by the Constitution to be impaired at all. This is not a question of degree, or manner, or cause, but of encroaching in any respect on its obligation—dispensing with any part of its force.' "

Again we quote :

"Statutes of limitation are statutes of repose. They are necessary to the welfare of society. The lapse of time constantly carries with it the means of proof. The public as well as individuals are interested in the principle upon which they proceed. They do not impair the remedy, but only require its application within the time specified. If the period limited be unreasonably short, and designed to defeat the remedy upon pre-existing contracts, which was part of their obligation, we should pronounce the statute void. Otherwise, we should abdicate the performance of one of our most important duties. The obligation of a contract cannot be substantially impaired in any way by a State Law. This restriction is beneficial to those whom it restrains, as well as to others. No community can have any higher public interest than in the faithful performance of contracts and the honest administration of justice. The in-

hibition of the Constitution is wholly prospective. The State may legislate as to contracts thereafter made as they may see fit. It is only those in existence when the hostile law is passed that are protected from its effects."

The decision quotes from one rendered by Chief Justice Taney, as follows:

"Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract; but if that effect is produced, it is immaterial whether it is done by acting on the remedy or directly on the contract itself; in other words, it is prohibited by the Constitution."

The Court concludes:

"We think the views we have expressed carry out the intent of contracts and the intent of the Constitution. The obligation of the former is placed under the safeguard of the latter. No State can invade it. And Congress is incompetent to authorize such invasion. Its position is impregnable, and will be so while the organic law of the nation remains as it is. The trust touching the subject with which this Court is charged is one of magnitude and delicacy. We must always be careful to see that there is neither nonfeasance nor misfeasance on our part. The importance of the point involved in this controversy induces us to re-state succinctly the conclusions at which we have arrived and which will be the ground of our judgment. The remedy subsisting in a State when and where a contract is made and is to be performed is a part of its obligation, and any subsequent law of the State which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution, and is therefore void."

Finally, the Atchafalaya Land Company having a continuing right to require title deed, if by virtue of an act of the Legislature, Williams, holding a null patent, can say to the Atchafalaya Land Company, "You cannot come in Court to annul my patent because of a State Law subsequent to your grant," then he has the power to destroy the obligation of the contract which bound the State to make title to the Atchafalaya Land Company at any time when called upon to do so.

We will add only a few references to the many decisions of the State Court bearing on these principles. In *Shields vs. Pipes*, 31 An. 765, the question was presented as to an issue where a judgment creditor sought to execute judgment against the parish under the provision of law authorizing the imposition of a tax to satisfy judgments against police juries. After the judgment was obtained this act was repealed.

The Court said:

"When the Legislature subsequently repealed all general laws authorizing the levy of a special or judgment tax and fixing the maximum of parochial taxation at one per cent, a rate which, it was admitted in this case, was not more than sufficient to pay the current expenses of a parish, it either intended that this law should apply only to judgments rendered in future, or it attempted to deprive these judgment creditors of all remedy, and to divest the rights vested in them by the judgments. It is no more within the power of the Legislature to deprive these creditors of the benefit of that part of their respective judgments which ordered the levy of the tax to pay the installments as they become exigible, than it would have been to reduce the amount or the rate of interest fixed by the judgments. In

all fairness and in legal intendment, it must be presumed that the Legislature did not intend to violate either the Constitution of the United States or of the State. The Constitution of the United States forbids a State to pass any law impairing the obligation of contracts. (Article 1, Section 10, Clause 1). The Constitution of Louisiana, Article 10, declares 'that every person, for injury done to him in his lands, goods, person or reputation, shall have adequate remedy by due process of law; and Article 110 declares that no retroactive law or law impairing the obligations of contracts shall be passed; nor vested rights be divested, unless for purposes of public utility and for adequate compensation made.' To apply the Act of 1877 to these pre-existing judgments, and the vested rights resulting from them, would be to violate the letter and spirit of these constitutional prohibitions, and would be in excess of legislative power."

In the 32 An. at page 411, Chief Justice Manning, discussing a case arising under similar conditions, stated the law with reference to the payment of these judgments, and said:

"We have already ruled that this repeal cannot affect judgments rendered previous to the repealing act, because a vested right in the judgment had been acquired and it was as much beyond the power of the Legislature to emasculate the judgment in that particular as in any other."

The case of *Cuna vs. Elton Lumber Co.* reported in the pamphlet of the Southern Rep., July 2-21, Vol. 88, No. 7, is one in which the provision of an Employers' Liability Act requiring an action in damages to be filed within a specified time after an accident, was repealed, after accident had occurred. The Supreme Court of Louisiana said that this was not of a remedial nature, but of the substance, and the change in the law did not affect the particular case.

We are not discussing the question as to whether or not the Legislature may pass remedial acts, but the contention is that no remedial act or act of any nature whatever can be passed which will impair the obligation of a contract or divest one of a vested right. The vested right in the Atchafalaya Land Company arises from the contract which imposes on the State the obligation to make title deed to the land when called upon, and this without restriction as to time. The Legislature cannot say it must be done within a fixed time.

Let us conclude this discussion by reference to the principle as lately announced by this Honorable Court in the case of *Bank of Minden vs. Clement* reported in advance sheets May 15th.

The Court says: "In *Sturges vs. Croninshield*, 4 Wheat 197, 198 (4 L. Ed. 529) opinion by Chief Justice Marshall it was said 'What is the obligation of a contract and what will impair it? It would seem difficult to substitute words more intelligible, or less liable to misconstruction, than those which are to be explained. A contract is an agreement in which a party undertakes to do, or not to do a particular thing. The law binds him to perform his undertaking, and this is, of course, the obligation of his contract. Any law which releases a part of this obligation, must in the literal sense of the word, impair it. But it is not true that the parties have in view only the property in possession when the contract is formed, or that its obligation does not extend to future acquisitions. Industry, talents and integrity constitute a fund which is as confidently trusted as property itself. Future acquisitions are, therefore liable for contracts; and to release them from this liability impairs their obligation.' "

And in *Planter's Bank vs. Sharp*, 6 How. 327, 128 L. Ed. 447, opinion by Mr. Justice Woodbury: "One of the tests that a contract has been impaired is that its value has by legislation been impaired. It is not by the Constitution to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force." See authorities referred to.

Third Assignment of Errors.

The Supreme Court erred in giving such effect to the 1912 statute of limitations as prevents the Board of Commissioners of the Atchafalaya Basin Levee District from fulfilling its pre-existing and continuing contractual obligation to the Atchafalaya Land Co. Ltd. and to the Schwing Lumber & Shingle Co. Ltd., thereby depriving said named companies of their property and property rights in and under certain valuable and pre-existing contracts of sale, without process of law and in contravention to the XIV Amendment of the Constitution of the United States.

It is needless to enter into any discussion as to what constitutes due process of law. For the purpose of the present argument, we announce that any act, whether by the legislative or executive department, which is violative of the fundamental principles upon which rests the safety of life, liberty or property, is a deprivation of property without due process of law. And surely when A has a vested right to a title deed to property granted by the State, the State cannot by legislative enactment provide that a subsequent illegal disposal of the property by an officer of the State can prevail, and the doors of inquiry into the validity of the title of A barred, because it has been possible to keep

A in ignorance for six years, of the fact that the State had issued an illegal patent against his land.

The Oklahoma Supreme Court in 2 H. L. R. page 332. *Crumps vs. Guyer*, says: "A vested right is the power to do certain actions or possess certain things lawfully, and is substantially a property right, and may be created either by common law by statute or by contract, and when it has once been created, and has become absolute it is protected from the invasion of the legislature by those provisions in the Constitution which apply to such right. And a failure to exercise a vested right before the passage of a subsequent statute which seeks to divest it, in no way affects or lessens that right." Again:

"Vested rights are to be secured and protected by the law, and a statute which divests or destroys such rights, unless it be by due process of law, is unconstitutional and void." Black, Constitutional Law, page 492.

Again, from the same, we quote:

"Vested rights are rights which have so completely and definitely accrued or settled in a person that they are not subject to be defeated or cancelled by the act of any other private person, and which it is right and equitable that the government should recognize and protect, as being lawful in themselves and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare."

We quote from the same author, page 482:

"And whoever by virtue of his public position, under a

State Government, deprives another of life, liberty or property without due process of law, violates the prohibition of the Constitution; and as he acts in the name of the State and for the State, and is clothed with her power, his act is the act of the State. If this were not so, the prohibition would have no meaning, and it would follow that the State had clothed one of her agents with power to annul or evade it."

Now, just consider the power given the Register of the State Land Office by Act 62 of 1912, as construed by the defendant.

The Supreme Court has time and again decided that the Levee Board and its assignee has a right to all the land in the Atchafalaya Basin Levee District. The Court has said that the right is as full to-day as it was at the time of the grant. It has a vested right. Still, under this act, the Register of the Land Office may issue a patent upon land affected by that vested right, and by waiting six years this vested right becomes defeated. The State would be in the position of granting a title, a vested right, by a legislative act, which gives notice to the world; and then by a legerdemain performance of taking the property back by the silent operations of the Register of the State Land Office.

The statement of the facts alone should destroy the contention of defendants.

The fact that it was a vested right has been discussed at length in the discussion of the nature of the obligation. This has been reinforced by repeated adjudications of the State Supreme Court to the effect that after the grant by the State to the Levee Boards, under the language quoted *supra*, the Register of the State Land Office had no authority to issue patents. We do not wish to encumber this brief

with the discussion of that proposition; but its being embedded in our Jurisprudence will be found by reference to

State Ex. Rel. School Board vs. Williams, 131 La. R. 62, *McDade vs. Bossier Levee District Board*, 109 La. 626 33 La. A. 1174; 41 La. A. 497; 106 U. S. 447; 2 La. A. 149; 2 La. A. 266; 11 La. 506; 11 La. A. 544; 139 U. S. 507.

The last adjudication, which reviews the Jurisprudence up to very recent date is that of *State Ex. Rel. Board of Commissioners of Caddo Levee District vs. Fred J. Grace Register*, etc., referred to above. We quote:

"The State having, by statute creating the Caddo Levee District, relinquished title to any and all lands within the District, the officers of the Land Department had no authority to issue a patent to any individual for land within the District. Any lands in this District appearing vacant on the records of the Land Office, were subject at all times to be claimed by the Board of Commissioners." *McDade vs. Bossier Levee District*, 109 La. R. 635 33 South 628; *Hall vs. Board of Commissioners of Bossier Levee District*, 111 La. R. 913; 35 South 976; *State Ex. Rel. Atchafalaya Basin Levee Board vs. Capdeville Auditor*, 142 La. 111; 76 South 327."

If the Register was divested of all power to issue a patent to land which had been transferred to the Levee Board, is it not clearly violative of the Constitution to close the doors against the grantee of the State when he seeks to remove this cloud on his title, and tell him he has no right to legal process because of the statute under discussion.

In conclusion it is respectfully submitted, that the issue being shorn of all contention, other than the interpretation of the contract, and the effect thereon of the legislative Act

of 1912, this Honorable Court should render such decree as will finally adjudicate the matter, and reinstate the judgment of the 19th Judicial District Court:

And it is so prayed.

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FILED
OCT 19 1921
WM. R. STANSBURY
CLERK

No. **106**

IN THE

Supreme Court of the United States

OCTOBER TERM 1920.

**ATCHAFALAYA LAND CO. LTD., SCHWING
LUMBER & SHINGLE CO. Ltd. INTERVENOR
AND BOARD OF COMMISSIONERS OF
THE ATCHAFALAYA BASIN LEVEE
DISTRICT, INTERVENOR,**

Plaintiffs in Error.

Versus

F. B. WILLIAMS CYPRESS CO. LTD.

**In error to the Supreme Court of the State of
Louisiana.**

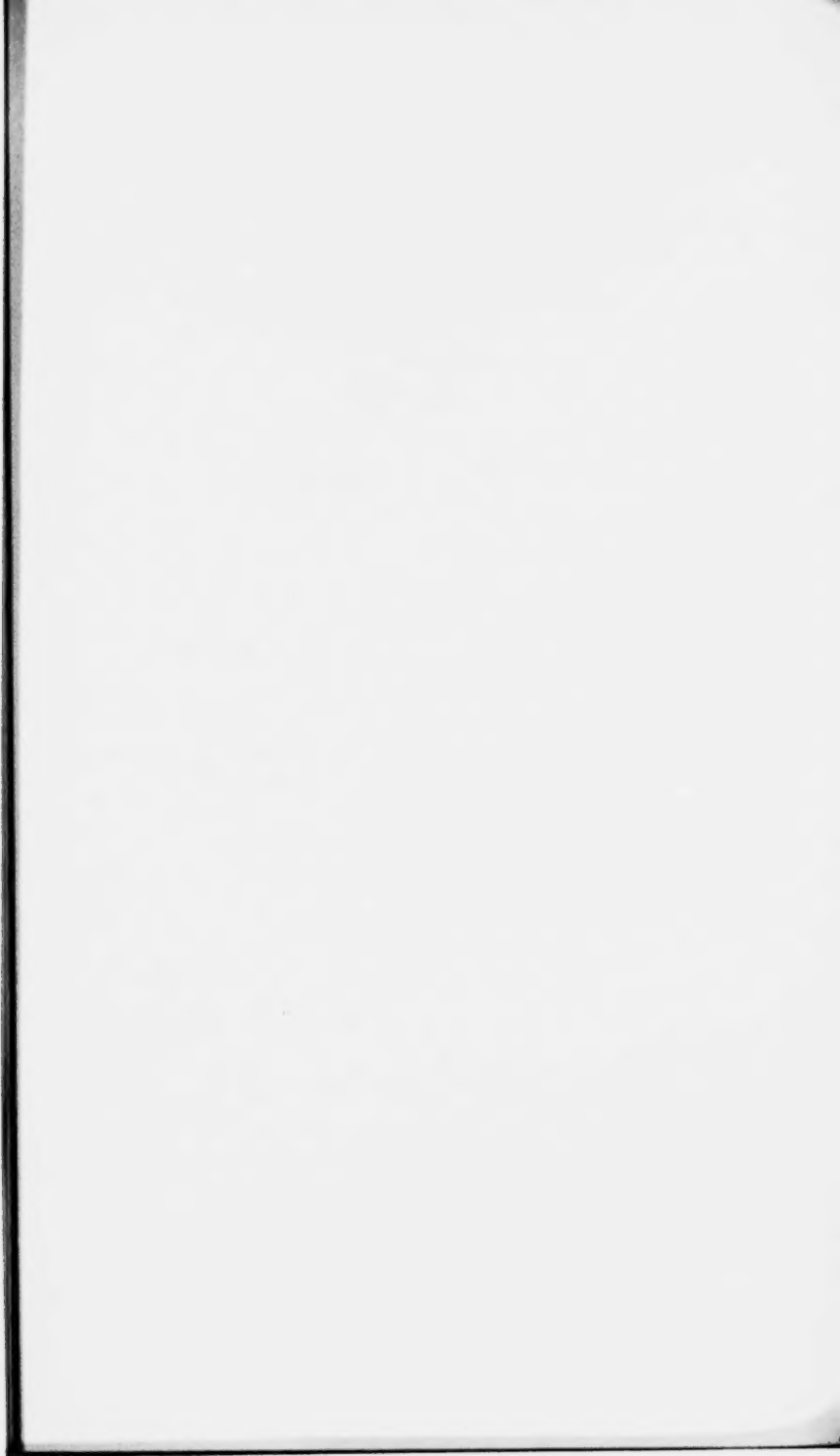
**Brief of Intervenor, Plaintiff in Error.
Schwing Lumber & Shingle Co. Ltd.**

**WALTER J. BURKE,
VENTRESS J. SMITH,
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Attorneys for Intervenor.**



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No. 449.

IN THE

Supreme Court of the United States

OCTOBER TERM 1920.

**ATCHAFALAYA LAND CO. LTD., SCHWING
LUMBER & SHINGLE CO. Ltd. INTERVENOR
AND BOARD OF COMMISSIONERS OF
THE ATCHAFALAYA BASIN LEVEE
DISTRICT, INTERVENOR.**

Plaintiffs in Error.

Versus

F. B. WILLIAMS CYPRESS CO. LTD.

**In error to the Supreme Court of the State of
Louisiana.**

**Brief of Intervenor, Plaintiff in Error.
Schwing Lumber & Shingle Co. Ltd.**

**WALTER J. BURKE,
VENTRESS J. SMITH,
F. E. DELAHOUSAYE,
CHARLES F. CONSAUL,
Of Counsel.**

SYLLABUS:

Where the State has by legislative act granted certain lands to a Levee District—the knowledge of that fact—and the further knowledge of the lack of authority of the Register of the State Land Office to otherwise dispose of the lands by patent, is brought to all persons; and one so acquiring patent is in legal bad faith.—**State vs. F. B. Williams Cypress Co. 131 La. R, page 69, Enc. of U. S. Sup. Ct. Repts, Vol. 7, page 960.**

To acquire title to real estate under the prescription of ten years the claimant must be in good faith.—**Civil Code, Arts 3478, 3479.**

A statute, susceptible of two interpretations will be given that in accord with, reason, and justice, and not that leading to hardship or absurdity.—**Ruling Case Law 25, page 1018.**

While a patent issued to lands which have passed out of the State, may bind the State, it cannot be invoked to defeat an anterior valid title held by third persons.—**Enc. U. S. Sup. Ct. Rept., Vol. 10, page 337.**

The Schwing Lumber and Shingle Co. Ltd., an Intervenor in the original suit, and a co-plaintiff in the writ of error while adopting all the propositions of the joint brief, begs leave to supplement it with the following considerations.

The State Supreme Court makes two statements, (somewhat separated, by a parenthetical discussion) which we desire to consider.

We quote: "This suit was filed on the 26th of April, 1919; that is, six years and nearly ten months after the passage of the statute of limitations, nearly 19 years after Wisner and Dresser had acquired the claim of the Board of Commissioners of the Levee District, and more than 28 years after the Pharr and Williams patents were recorded in the land office and in the Parishes of Iberia and St. Martin."

"Counsel for plaintiff and intervenors contend that the statute of limitations cannot stand in the way of this suit without giving the law the retroactive effect of divesting a vested right and impairing the obligation of a contract, in violation of the first paragraph of Section 10 of Article 1 of the Constitution of the United States, and without depriving the Plaintiff and Intervenor of their property without due process of law, in violation of Sec. 1 of the Fourteenth Amendment."

"It is not contended that the six years allowed, from and after the passage of the Act was not sufficient time for the Board of Commissioners of the

Levee District, or for any person, firm or corporation claiming rights acquired from the Board, to institute a suit—to annul any patent that had been issued for the lands of which the Board of Commissioners might have demanded an instrument of conveyance from the Auditor and the Register of the Land Office. On the contrary, as far as the record discloses, no attempt was made by the Board of Commissioners of the Levee District, or by Wisner and Dresser, or by either of them, or by the South Louisiana Land Co., or the Atchafalaya Land Company, or by the Schwing Lumber and Shingle Co. to obtain an instrument of Conveyance of the lands in contest, or to annul the patents that had been issued to Pharr and Williams until the six years allowed by the Statute of limitation had expired.

“There is an admission in the record that the Atchafalaya Land Co. and the Schwing Lumber and Shingle Co. employed Abstractors of titles in the latter half of the year 1916 to examine title to all lands within the Atchafalaya Basin Levee District ‘with a view of ascertaining what lands they might lay claim to, under the contract alleged in the petition, and that as a result of the investigation of the Abstractors, the present suit was brought.’ As this suit was brought on the 26th of April 1919, it is apparent that the work of the title abstractors did not take many months. An examination of the records of the land office, at any time within the preceding 28 years, would have disclosed that patents had been

issued to Pharr and Williams for lands within the Levee District, for which the Board of Commissioners might have demanded an instrument of conveyance under the provisions of Sec. 11 of Act 97 of 1890."

The Court eliminates from this issue certain propositions, discusses others, and continues:

"The Legislature did not, in the Act creating the Levee District, put a time limit upon the right of the Board of Commissioners to demand instruments of Conveyance of lands conveyed or intended to be conveyed by the statute. It is well settled that, after the State was, by the Act of the Legislature, obligated to transfer to the Board of Commissioners all lands within the Levee District, the officers of the Land Department did not have authority to issue any patent to any one else for land within the District. See *State ex Rel. Board of Commissioners of Caddo Levee District vs. Grace*, Register. 145 La. R. 962, 83 South. 206, and list of decisions there cited. But it is also well settled that the lands intended to be conveyed by the Statute creating the Levee District remained under the control of the Legislature so long as an indefeasible title had not vested in any individual or private corporation. In *State vs. Cross Lake Shooting and Fishing Club supra*, and again in *State Ex Rel. Atchafalaya Basin Levee Board vs. Capdeville*, Auditor 142 La. R. 111, 76 South 327 it was held that the Legislature retained the power to revoke the donation made by the Statute creating

the Levee District, as to any land for which an instrument of conveyance had not been issued to the Board of Commissioners.

Far from revoking the donation or grant of any land, for which the Board of Commissioners might have demanded an instrument of conveyance, Act 62 of 1912 allowed the Board six years in which to demand instruments of conveyance, even for lands for which patents had been issued to other parties."

The proposition that the grantee and its assigns, had, by a judicially interpreted contract, an unlimited time in which to call for title deed, is so vital, we may be pardoned this additional effort to disclose the fallacy of the reasoning of Mr. Justice O'Neil, as organ of the State Supreme Court. We will do so, without unnecessary repetition of arguments advanced in other briefs.

The opinion quoted, takes the trouble to review the dates of transactions, showing that,

First, it would not have required a long time to have ascertained that the lands had been patented to Williams, and

Second, that the plaintiff had delayed twenty-eight years.

What of it? There are two prescriptions in Louisiana by which the owner of land might lose his title.

The first is embodied in the following articles of the Civil Code 3478. "He who acquires an immov-

able in good faith and by just title prescribes for it in ten years."

Art. 3479. "To acquire the ownership of immovable by the species of prescription which forms the subject of the present paragraph, four conditions must concur.

1. Good faith on the part of the possessor.
2. A title which shall be legal and sufficient to transfer the property.
3. Possession during the time required by law, which possession must be accompanied by the incidents hereinafter required.
4. And finally an object which may be acquired by prescription."

The Court would have given title to the defendant on the plea of prescription of ten years, if that availed, but not only it could not run while the property remained in trust in the State or its agency, but the F. B. Williams Cypress Co. could not acquire by that prescription because it was in bad faith. In the case of State vs. F. B. Williams Cypress Co., 131 La. R. page 69, the defendant had taken over from F. B. Williams timber he had contracted for with the School Board. The Court held he was in legal bad faith. The F. B. Williams Cypress Co. was declared to be the same interest as F. B. Williams. The corporation belongs to him, to the extent of ninety per cent, and the remainder is distributed among his children.

The Court held that the School Board had no

authority to sell the timber, and hence could give no title, even such as might be cured by prescription. We quote: "The sale to F. B. Williams under which defendant claims was therefore absolutely and incurably null, and conveyed no title whatever; and, Williams having no title conveyed none to defendant. Nor does the fact that defendant acquired such title as it sets up from Williams, affect the question of its good or bad faith. It is unnecessary to inquire here, whether any third person or corporation claiming under a title from Williams, could be held to have acquired the status of a purchaser in good faith, since Williams' title shows upon its face that the attempted sale to him was made by a body not authorized to sell in violation of a prohibitory law. As the matter stands, however, Williams having merely turned over the property to a corporation, evidently organized by himself for his own purposes, of which he became president, and in which he owned ninety per cent or more of the stock, his knowledge or presumed knowledge of the character of his title, must be imputed to the corporation. We may add in that connection, that whilst the members of the School Board and Williams, alike, acted under a misapprehension of very plain provisions of law, the evidence leaves no doubt, they did act under such misapprehension, and morally in good faith. We are compelled however, to apply the maxim, '*ignorantia juris non excusat*,' and to hold that defendant, being bound to know the law, must be considered to have

converted the timber to its own use, knowing that it had no title thereto, and hence to have been in legal contemplation a possessor in bad faith."—**Enc. of U. S. Sup. Ct. Repts. Vol. 7, page 960.**

It will be readily appreciated how applicable to the instant case is the proposition that Williams having secured a patent from the Register of the State Land Office of lands as though belonging to the State, when by Legislative Act, it had been conveyed to the Levee Board, he is held to have knowingly received a patent from one divested of the authority to issue it. We are not called upon to consider the Codal prescription of ten years, before this Honorable Court, but we wish to accentuate the proposition that the comments of the State Court on the issue of delays is without merit, for even if the contract did not (as stated in *Atchafalaya Basin, etc. vs. Capdeville*, in 142 La. R. 111, interpreting it) "contemplate(s) that the Donation of the Land to the Atchafalaya Basin Levee Board should stand open indefinitely for acceptance, and that the lands should be conveyed to the Board from time to time, as requested by it, etc." still there would be no adverse running of time because of the legal bad faith of Williams.

The other prescriptive term is that provided by Article 3499 of the Civil Code. "The ownership of immovable is prescribed for by thirty years without any need of title or possession in good faith." That term has not run. If these are the only prescriptive

terms by which defendant could have acquired the land, and they do not apply to the case—why should the discussion by the Supreme Court of the delay in exercising the right by the grantee have any weight.

We have so exhaustively discussed the proposition in the main brief that under the State Supreme Court's interpretation of the very grant to the Atchafalaya Levee Board, and the Jurisprudence bearing on identical grants, it was of the essence of the grant that the grantee should have all time to secure title deed to the land granted, that we will not burden the Court with more than a reference to that discussion in the joint brief, more specially beginning at page 23.

We may reinforce the argument by the consideration of the similarity between the method of making title deed, or final transfer of the lands granted by the United States to the State by the Swamp Land Grants, and the grant by the State to the Levee Board.

The Swamp Land Grant to Arkansas and other States provides that the Swamp and overflowed lands "which shall remain unsold at the passage of this act, shall be and the same are hereby granted to said State."

The second section provides: "It shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate test and plats of the land described as aforesaid, and transmit the same to the Governor

of the State of Arkansas; and at the request of said Governor cause a patent to be issued to the State therefor; and on that patent the fee simple to said lands shall vest in the State of Arkansas, subject to the disposal of the legislature thereof, etc." By the final section, the "provisions of this act shall be extended to, and their benefits be conferred upon each of the other States of the Union in which such swamp and overflowed lands, known and designated as aforesaid, may be situated."

The Court, taking notice of the manner of functioning of the various governmental departments, knows—

First. That although the grant was made as far back as 1850, the applications by governors for patents vesting fee simple under the original grant are being daily filed and acted upon.

Second. That in the course of passing upon these applications, the Land Department must make, even at this late date, its investigation of the record to ascertain if any title prior to the grant, had vested in third persons.

Third. That when no anterior title exists, and the lands come within the designation of swamp and overflowed lands, the patent must issue without opening the ear to any contention adverse to this continuing right to claim title deed, on the plea that it is stale, or that the State could have ascertained at a much earlier date that land was swamp and overflowed, and therefore included in the grant.

The grant was one in praesenti—the muniment of title to specific tracts as included in the grant continues to be issued upon the application of the Governor and the approval of the Secretary of the Interior. The examination of the public records is one of the means of ascertaining whether the land claimed to be included in the grant, is subject to a prior claim. The lands granted by Congress are being transferred in course of administration as provided by the grant.

Now note the parallel in the situation arising out of the grant by the State to the Levee Board, and the proceedings leading to securing title deed to specific tracts.

The language of the entire section 11 of Act 97 of 1890 is quoted in the main brief at page 7.

It provides that “all lands now belonging or that may hereafter belong to the State of Louisiana, and embraced within the limits of the Levee District as herein constituted, shall be, and the same are **hereby given, granted, bargained, donated, conveyed and delivered** (*italic ours*) unto the Board of Levee Commissioners of the Atchafalaya Basin Levee District, etc.”

“After the expiration of said six months, it shall be the duty of the Auditor and Register of the State Land Office on behalf of and in the name of the State, to convey to the said Board, whenever from time to time said Auditor and Register of the State Land Office, or either of them, shall be requested to

do so by said Board of Levee Commissioners, or by the president thereof; and thereafter said president of said Board shall cause said conveyance to be properly recorded in the Recorder's office of the respective parishes wherever said lands are or may be located, and when said conveyances are so recorded, the title to said lands, with the possession thereof, shall, from thenceforth, vest absolutely in said Board of Levee Commissioners, its **successors** or **grantees.**" *Italics ours.*

As in the Congressional grant, which vested fee simple title upon issuance of patent, the perfection of the grant to the land comes with the deed executed by the Auditor and Register from time to time upon the request of the Board or its President.

The grantee has to make application for the land to which it claims title, and to do so must investigate the records to ascertain that the lands belonged to the State at the time of the grant. It calls for the investigation, the abstracting, which the State Court says could have been made at an earlier date. But what reason is there to urge against the exercise of this right to-day, when the title could not be taken away from the grantee by any adverse possession as long as it remained in trust in the State. when the grantee, having a vast area of swamp lands to dispose of, could well be imagined as being able to use, or to dispose of the same only in part at any one time, and as approaching the completion of title as the needs required, just as the State has been du-

ring seventy odd years, continually asking for fee simple deeds to lands granted it in 1850.

Besides the very decision under discussion tells us that "The Legislature did not, in the act creating the levee district, put a time limit upon the right of the Board of Commissioners to demand instruments of conveyance of lands conveyed, or intended to be conveyed by the Statute. And it is well settled that, after the State was, by Act of the Legislature, obligated to transfer to the Board of Commissioners all lands within the Levee District, the officers of the Land Department did not have authority to issue a patent to any one else for land within the district." True the Justice continues the discussion of the erroneous proposition that the legislature had the power as long as deed had not been made to revoke the grant notwithstanding the intervening rights of third persons, still the force of the proposition remains that there was no time limit fixed in the act, but the perfection of the grant by issuing evidences of title was to continue in course of administration.

Again, in the interpretation of this very grant, where the Atchafalaya Land Co., having no deed from the Levee Board to the specific tract which the State was offering to sell under act 215 of 1908, but standing upon its rights as assignee, of the Levee Board, to all the rights it acquired from the State, enjoined the sale, the State Supreme Court, holding that as transferee to all the rights of the Levee Board, it had such title as would justify its opposi-

tion to the sale of the land by the State, and quoting from another decision likewise interpreting the same contract, said:

"The most recent case upon the subject is the State Ex Rel Atchafalaya Basin Levee Board vs. Capdeville, Auditor, 142 La. R. 111, 76 South in which it was held quoting from the syllabus, that 'Act No. 97 of 1890, contemplates that the donation of lands to the Atchafalaya Basin Levee Board therein contained should stand open indefinitely for acceptance, and that the lands should be conveyed to the Board from time to time, as requested by it, and that the Act is unaffected by Act No. 215 of 1908; hence the request which the Board now makes of the State Auditor and Register of the State Land Office to execute conveyances of lands so donated is as well within the law as it has ever been, and as the ministerial duty rests upon those officers to comply with that request, mandamus will lie to compel such compliance.'

"Applying that rule to the instant case, we can discover no appreciable difference between the position of the plaintiff herein standing in the place and exercising the rights of the Board of Commissioners (which by its contract it is expressly authorized to do) and the Board itself, if it were before the Court, instead of its transferee; and as the Board (as between it and the defendants) would have the right to demand a title to the land in dispute, so its transferee has the right to protect the

title acquired from the Board by staying defendants in their attempts to sell the lands to a third person."

—**Atchafalaya Land Co. vs. Grace** 143 La. R. 637.

We submit then, that the State Court has nothing upon which to condemn plaintiff or intervenors because they took the time they desired to exercise their rights under the grant. And surely their so exercising the right has no reference to the special prescriptive statute at issue in this cause.

We beg leave to submit another proposition to the Court.

The State made its grant to the Levee Board (with full power to sell all its rights) by Sec. 11 of Act 97 of 1890. The patents to Williams were issued after this grant to the Board of Commissioners.

In 1900, Wisner and Dresser, authors of title in the Atchafalaya Land Co. bought all the rights of the Atchafalaya Levee Board, with the obligation on the part of the Board to exercise all its powers and prerogatives to vest title in its assignee when required to so do.

In 1912 by Act 62, the Legislative provided that: "All suits or proceedings of the State of Louisiana, private corporations, partnerships or persons, to vacate and annul any patent issued by the State of Louisiana, duly signed by the Governor of the State and Register of the State Land Office, and of record in the State Land Office, or any transfer of property by any subdivision of the State, shall be brought only within six years from the issuance of the patent:

provided, that suits to annul patents previously issued, shall be brought within six years from the passage of this act."

Now, defendant contends, that notwithstanding the outstanding title, taking the lands out of the public domain anterior to 1912—this act prevents the owner of the anterior title to question an outstanding patent six years old. To follow that proposition to its conclusion would lead to most absurd consequences.

Let us illustrate. A has paid taxes upon his property—but by virtue of a double assessment, not known to him, his property has been adjudicated to the State. The Governor and Register of the State Land Office issue a patent to B. A may remain in ignorance of this illegal invasion of his property rights for more than six years, when B comes to claim title under a patent, and lo and behold, this patent must silence his voice in the vindication of his rights.

Again: The State by legislative act gives a body of land to B and provides then whenever B wants the title deed to evidence the inclusion of any specific portion of the land in the grant it may receive it. B holding title by the original grant sells his rights to C. The right to the land has passed from the State. B or C have nothing to do to preserve their right, but only something to do to secure final proof of their right. Afterwards the State by patent undertakes to give the land to D. The orig-

inal grantees know nothing of this. They remain in ignorance of it for six years, and they are meet with an adverse title based upon a patent wrongfully issued.

Will not the legal mind immediately formulate a glaring example of deprivation of property rights, without due process of law, if it were attempted to divest B and C of their ante-dating title. Let us say that under the act the patent is not to be attacked. As between the State and the patentee, it may evidence contractual relations; it may be perfectly valid as evidencing whatever it may import as between the State and the patentee, but as to owners by previous title, of the lands designated, it means nothing.

The rule of law is, that when a statute is susceptible of two interpretations, that must be given which produces the most reasonable and beneficial interpretation that its language permits.

“And when a statute is ambiguous in terms or fairly susceptible of two constructions, the injustice, unreasonableness, absurdity, hardship or even inconvenience which may follow one construction may properly be considered, and a construction of which the statute is fairly susceptible may be placed on it that will avoid all such objectionable consequences and advance what may be presumed to be its true object and purpose.” **Ruling Case Law 25 page 1018.**

What is the logical interpretation of the Statute of 1912. The door is closed by it, against any attack by any one upon a patent issued by the State bearing

upon lands belonging to the State. It can never mean that the holder of a patent of recent date issued by the Register and signed by the Governor can urge the same against the holder of a prior valid title. The holder of the patent last issued may have a right under it as against the State, and no one may question that right, as between the holder and the State; but when he holds up that patent after a lapse of six years to lay claim to land previously acquired by others under the Statute of limitations referred to, he is seeking to deprive a person of property without due process of law.

If we look to a motive for the passing of the act, we will find it in the desire to quiet the title of persons holding patents to lands entered upon certificates which did not authorize the issuance of patent by the Register of the State Land Office. The officer of the State, having irregularly parted with title to lands which the State had a right to sell, the State having received some consideration, desired to quiet such titles, and this legislation was the means. The act followed upon the litigation which questioned the right of the Register of the State Land Office to issue patent to John McEnery for lands other than those recovered by him under a contract with the State. The facts appear in *Frellsen vs. Crandell* decided by this Court in 1910 and reported in 30 Sup. Court Reported 490.

The Court held that the validity of the patent was a matter between the State and the patentee,

but the doubt always remained and at the next bi-annual session of the Legislature, a *quietus* was given to all patents issued by the State; but by every rule of reason and Justice, the law is applicable only to those patents bearing upon lands which the State had a right to dispose of.

Let us say, that by the prescriptive term of six years we cannot seek to annul the patent—still when it is presented to affect title adverse to plaintiff, the answer is—that the patent may hold as between the State and the patentee for what it is worth—but it cannot destroy the rights of third persons—Plaintiff and Intervenors, holding a prior title.

Enc. of U. S. Sup. Ct. Reports Vol. 10, page 337, reads:

“When a patent has been issued by the officers of the United States, the presumption is in favor of its validity, and passes the legal title, but it may be rebutted by proof that the officers had no authority to issue it, on account of the land not being subject to entry and grant.”

“A patent issued in pursuance of an act of Congress confirming land claims is conclusive as between the United States and the claimants, but it does not affect the interest of third persons.”

Let the patent be worth what it may as against the State, it cannot affect the Plaintiffs in error.

The Intervenors, Schwing Lumber and Shingle Co. Ltd., join in the prayer that the decree of the Supreme Court of Louisiana be annulled and set

aside, and the Judgment of the Nineteenth Judicial District Court reinstated.

Respectfully submitted,

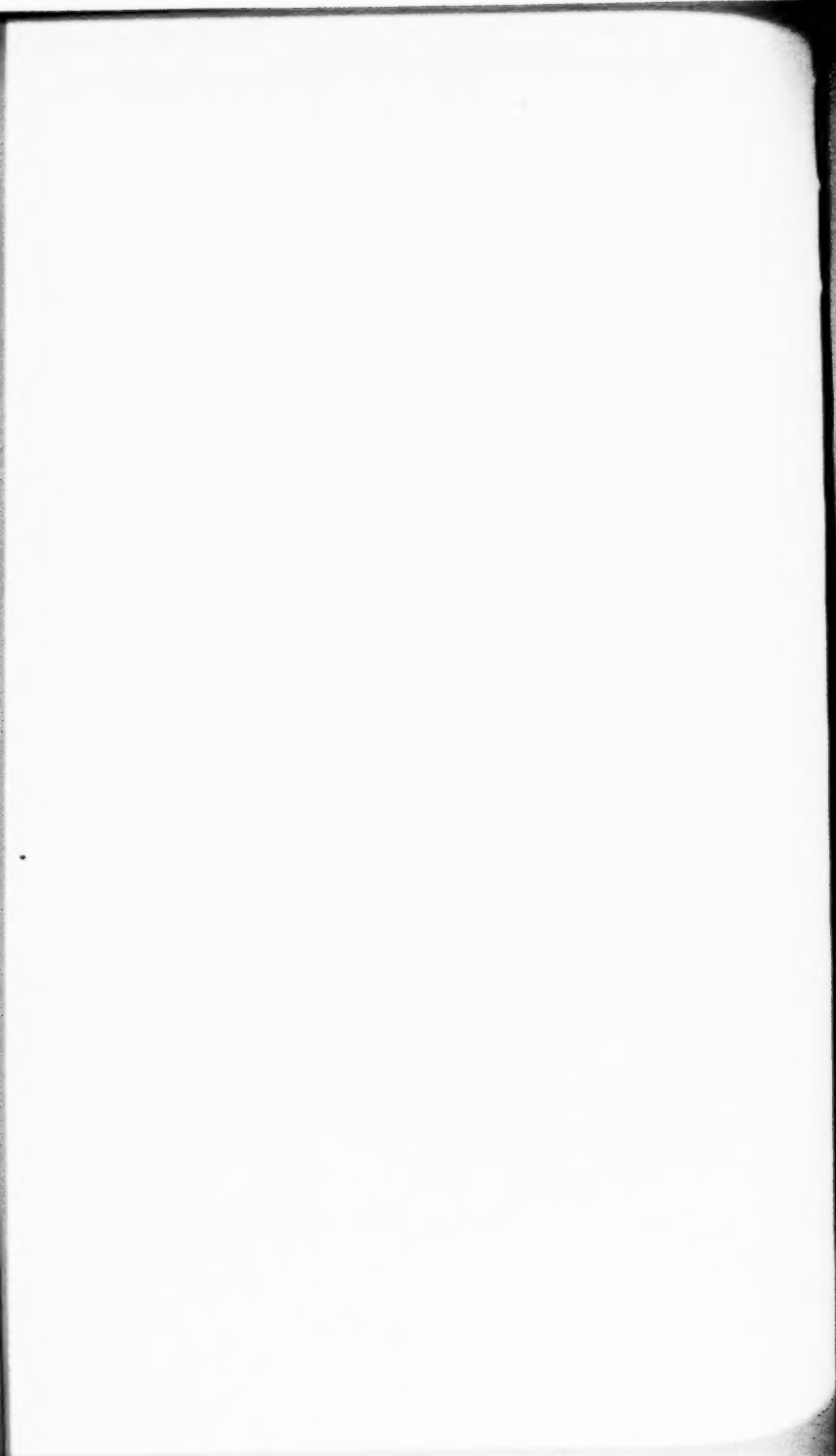
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Attorneys for Intervenor.



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JAMES D. M.

No. **106**

IN THE

United States Supreme CourtOCTOBER TERM **1921**

**ATCHAFALAYA LAND COMPANY, LIMITED; SCHWING
LUMBER AND SHINGLE CO., LTD., AND THE
BOARD OF COMMISSIONERS OF THE
ATCHAFALAYA BASIN LEVEE
DISTRICT**

Plaintiffs in Error.

Versus

F. B. WILLIAMS CYPRESS CO., LTD.

In Error to the Supreme Court of the State of Louisiana.

Brief of Intervenor, Plaintiff in Error,

**The Board of Commissioners of the Atchafalaya Basin
Levee District.**

**JACOB H. MORRISON,
CHARLES F. CONSAUL,
Of Counsel for Plaintiff in Error.**

Time of birth: 11:00 AM

REFERENCES

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DIVISION OF SUBJECTS.

Introductory remarks on appearance of Intervenor.

Comments on certain facts.

Legal argument.

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No. 419.

IN THE

United States Supreme Court

OCTOBER TERM 1920

ATCHAFALAYA LAND COMPANY, LIMITED; SCHWING
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Brief of Intervenor, Plaintiff in Error,
The Board of Commissioners of the Atchafalaya Basin
District.

JACOB H. MORRISON,
CHARLES F. CONSAUL,
Of Counsel for Plaintiff in Error.



The Board of Commissioners of the Atchafalaya Basin Levee District, having intervened to join the Atchafalaya Land Company as Plaintiff, adopts the brief jointly filed by the Plaintiffs in Error.

Burdened, however, in behalf of its assignees with the obligation set out in the contract of sale of the lands granted it by the State, "with all its rights, powers and privileges and prerogatives to perfect its title, or the title acquired under the agreement, to all lands to which it could have, and the parties of the second part," (Wisner & Dresser, Authors of Plaintiff's title) "can now justly lay claim to, and to do so whenever requested by the said party of the second part, etc," it desires to supplement the original brief with the following considerations of facts as well as of law.

ON THE FACTS.

The Court will take notice of the fact that the Swamp Land Grant, which was a grant in praesenti, was of all lands of a certain nature—swamp and overflowed—situated within certain States. The determination of the fact whether any particular tract of land is of a nature to be included in the grant, is determined by means provided; and that matter having been determined, the final certificate of title is issued by the United States Land Office. The grant of all swamp and overflowed lands was made to the States over seventy years ago, and this Honorable Court must take further Judicial notice of the fact that the issuance of cer-

tificates to States upon proof of the swamp and overflowed nature of lands, continues as a governmental practice. So, when the grant was made by the State to the Levee Board of all swamp and overflowed lands granted to the State by Congress, with the right in the grantee to require title deed to be made whenever the Register of the State Land Office and the Auditor were called upon to do so, there was something of an extension of the method of procedure to secure title deed to specific tracts which might be claimed by the grantee under the universal grant of all lands in the District.

See Sec. 11 of Act 97 of 1890 quoted in the original brief at page 7. Also the sale by the Board to Wisner and Dresser Exhibits P. A. & P. B., pages 19 to 21 of Transcript.

The Board of Commissioners of the Atchafalaya Basin Levee District has always considered the right of Wisner and Dresser and their assignees, the Atchafalaya Land Co., Ltd., to receive title to specific tracts included in the general grant as a continuing one, and in compliance with its own contractual obligation towards the Atchafalaya Land Co., Ltd., it has always, and continues to demand of the Register of State Land Office and the State Auditor, titles to specific tracts whenever required to do so by its assignee, and as is provided for in Sec. 11 of Act 97 of 1890. See Transcript page 93.

LEGAL ARGUMENT.

The original brief makes reference to the fact that the grants to the various Levee Boards were in language identical to that of Act 97 of 1890, making the grant to the Board of Commissioners of the Atchafalaya Basin Levee District.

We venture to present to this Court the main principle of each case decided by the State Supreme Court in the order in which they were decided; and it is confidently believed that the Court will appreciate at once the violence done to a fixed Jurisprudence on a subject, by the decision of Mr. Justice O'Neil in the instant case.

The first case is that of McDade vs. Bossier Levee Board, 109 La. R. 627; decided in 1902.

"After the State had by Act No. 89 of 1892, declared its purpose of donating the lands it owned, within the limits of the Bossier Levee District to the said District, it was not competent for the plaintiffs to acquire any right in and to any portion of the land under the terms of Act No. 21 of 1886 granting pre-emption rights to actual settlers."

Next is Hall vs. Levee Board 111 La. 913; decided in 1904. We read on page 925:

"The plaintiff claims that if she has not title by accretion" then that by Act No. 21, p. 31 of 1886, the Legislature gave to those in possession of State Lands the right to enter

the same by preference over all others, at the legal price of 75 cents per acre, and that prior to the passage of the Act 89, p. 113 of 1892, purporting to grant certain State lands to said defendant, and at the time of the passage of the Act, and ever since, and now, the plaintiff and her authors were and are in possession as owners of said strip of land, and had and have a vested legal right to purchase said land at said price, etc."

"The evidence does not sustain the allegation as to the date at which plaintiff took anything like actual possession of the land in question, and we adhere to the view expressed in the McDade case, that after the passage of Act 89, p. 113 of 1892, it was not competent for persons to acquire any rights to lands, within the Bossier Levee District, under Act No. 21, p. 31 of 1886, granting pre-emption rights to actual settlers."

In *Lattier vs. Board of Commissioners* decided at the same time, the Court simply adopted the reasoning in the Hall case.

We refer to it simply as an affirmation of the principles.

We find an adverse note in the *Cross Lake Case* reported in 123 La. R. page 208 and decided in 1909. "Under Act No. 74 of 1892, and Act No. 160 of 1900, the grant of lands made by the State to the Board of Commissioners of the Caddo Levee District is not a grant in praesenti, but is intended to vest in the grantee a disposable title only when

proper instruments of conveyance, executed by the State Auditor, and Register of the State Land Office are recorded in the Parishes where the lands lie. Hence a sale of such lands by the Board prior to the registry of such conveyance is void, and the party attempting to purchase is liable to eviction at the suit of the State."

This was at variance with the preceding decisions on the same issue, and at variance with the unbroken line of subsequent decisions up to the present case.

It is worthy of note here, that the case, broadest in its scope, holding that the grant by the State to the Levee Boards vested title in the Board, subject to title deed to be executed on demand of the Board, is the decision in State Ex. Rel. Board of Commissioners of Caddo Levee District vs. Grace Receiver, Capdeville Auditor and Douglas reported in 145 La. R. 966. In that case, the Court through Justice O'Neil decided that the title in the Levee Board was such, it had the right to sell the property before deed from the State, and sustained the suit of the Board seeking to force the Register to cancel a patent previously issued, and to make title deed to the Board. It is still worthy of note, that Mr. Justice O'Neil announces, in deciding this case that there is nothing contrary to it in the Cross Lake Case—when that case was on the diametrically opposite contention, that the Levee Board had no title until the execution of deed by the Register and Auditor; and in the instant case, in which he holds a position diametrically opposed to that

announced in the case of the Caddo Levee Board, he refers to the Cross Lake Case as a support. The Cross Lake Case and the decision in the instant case are linked to do violence to an otherwise unvarying Jurisprudence on these propositions.

But—let us continue the compilation.

The case of Hartigan vs. Weaver was decided just one year after the Cross Lake Case, 126 La. R. It returns to the original Jurisprudence. At page 496, it holds that the Act 215 of 1908, which prescribed the manner in which lands belonging to the State, and to Levee Boards should be sold, did not apply to lands subject to contracts entered into previously by the Levee Boards.

Now we come to the interpretation of the very grant by the State to the Board of Commissioners of the Atchafalaya Basin Levee District. We direct special attention to the positive disregard of the principle set out in the Cross Lake Case passing on another, though identical grant—and the variance with the recent interpretation by Justice O'Neil in the instant case.

We refer to State Ex. Rel. Atchafalaya Basin Levee Board vs. Capdeville. It was decided in 1917. 112 La. R. 111.

“Considering the remaining ground relied on by respondents, we do not find that Act 215 of 1908 has any application to land which had been granted by the State to its

levee boards, save that it makes the same provision with regard to the sale of such lands to would-be purchasers as with regard to lands not so granted.

It is said that the grant to relator did not vest title until supplemented by acts of conveyance, to be executed by the auditor and register. It has, however, several times been held by this Court that such grants, at least operate to withdraw the lands affected by them from the market. *McDade vs. Bossier Levee Board*, 109 La. 627, 33 South. 628; *Hall vs. Levee Board*, 111 La. 913, 35 South. 976; *Hartigan vs. Weaver*, 126 La. 492, 52 South. 674.

The Levee Boards are mere State agencies, and, as between them and the State, the State is at liberty to cancel donations of land, made to them, whether acts of conveyance have been executed or not. But the donation to relator has not been canceled, and the unrepealed act in which it is contained, after declaring that:

‘All lands, now belonging, or that may hereafter belong to the State of Louisiana, and embraced within the limits of the Levee District as herein constituted, shall be, and the same hereby are, given, granted, bargained, donated, conveyed and delivered unto said board of levee commissioners’—and, after providing that a delay of six months should be allowed for the redemption of lands which may have been acquired by the State at tax sales, further declared that:

‘After the expiration of said six months, it shall be the duty of the auditor and the register to convey to the said

board, by proper instruments of conveyance, the lands hereby granted or intended to be granted to said board, whenever, from time to time, said auditor and said register or either of them, shall be requested to do so by said board or by the president thereof, and, thereafter, said president shall cause said conveyances to be properly recorded in the respective parishes where said lands are or may be located, and, when said conveyances are so recorded, the title to the said land, with the possession thereof, shall, from thenceforth, vest absolutely in said board,' etc.

It was therefore within the contemplation of the act that the donation should stand and remain open to acceptance and confirmation indefinitely and the request which the board now makes of the auditor and register is as well within the law as though it had been made immediately upon the expiration of the six months allowed the former owner and tax debtor within which to redeem."

The contract between the Board of Commissioners of the Atchafalaya Basin Levee District and the Atchafalaya Land Co. Ltd., involving the interpretation also of the original grant by the State to the Atchafalaya Levee Board was before the State Supreme Court in Atchafalaya Land Co., Ltd. vs. Grace Register et al, 143 La. R. 637, decided as late as 1918. We call attention to the list of decisions referred to by the Court as sustaining its interpretation of the contract, and the effect of conflicting legislation. They are the cases herein referred to, and accentuate, by reference to them, the repudiation of the Cross Lake Case. We quote:

"The contention on behalf of defendants is that, pursuant to the donation declared by the act of 1890, though the board of commissioners might demand a title to the tract in question, and though, for a valuable consideration, the board, by two acts, respectively, promised to convey, and did convey, the tract in question to plaintiff's author, yet that plaintiff cannot exercise that right, because by Act No. 215 of 1908 the General Assembly declared all applications for entry or purchase of public lands of the State, then on file, to be null, and prescribed a particular method whereby they should thereafter be sold. This Court has, several times, had occasion to consider the effect of the grants contained in Act No. 97 of 1890, and similar statutes, and of Act No. 215 of 1908, when construed therewith, and has held the statute last mentioned to be inapplicable to claims for lands granted under those first mentioned, or under contracts with the grantees; that, in effect, the State had parted with the lands donated to the levee boards; that they were not thereafter open to entry as 'public lands of the State and that, having been subjected to the disposition of the levee boards, the contracts made by those boards with reference to them could not be affected by subsequent legislation. *McDade vs. Bossier Levee Board*, 109 La. 640, 33 South, 628; *Hall vs. Board*, 111 La. 913, 35 South, 976; *Hartigan vs. Weaver*, 126 La. 492, 52 South, 674; *State vs. Capdeville, Auditor*, 128 La. 283, 54 South, 820. The most recent case upon the subject is *State ex rel Atchafalaya Basin Levee Board vs. Capdeville, Auditor*, 142 La. 111, 76

South, 327, in which it was held (quoting from the syllabus) that:

"Act No. 97 of 1890 contemplates that the donation of land to the Atchafalaya Basin Leve Board therein contained should stand open, indefinitely, for acceptance, and that the land should be conveyed to the board, from time to time, as requested by it, and that act is unaffected by Act No. 215 of 1908; hence the request which the board now makes of the State auditor and register of the State land office to execute conveyances of the land so donated is as well within the law as it has ever been, and, as the ministerial duty rests upon those officers to comply with that request, mandamus will lie to compel such compliance."

The Court continues:

"Applying that ruling to the instant case, we can discover no appreciable difference between the position of the plaintiff herein, standing in the place and exercising the rights of the board of commissioners (which by its contract it is expressly authorized to do) and the board itself, if it were before the Court, instead of its transferee; and as the board (as between it and defendants) would have the right to demand a title to the land in dispute, so its transferee has the right to protect the title acquired from the board by staying defendant s in their attempts to sell the land to a third person."

We could rest the entire subject upon the decision of Mr. Justice O'Neil in *State Ex Rel. Board of Commissioners of Caddo Levee District vs. Grace Register, Capdeville Auditor and Douglas* reported in 145 La. R. 962 decided as late as 1919.

In fact, we request the Court to read that case, bearing in mind that it presents a situation parallel to the instant case, that it refers to the authorities upon which the sustained Jurisprudence rests, and then it will become patent, how irreconcilable is the decision of Mr. Justice O'Neil in the instant case rendered upon the heels of the decision in the Caddo Case.

We quote at page 963:

"By section 9 of the statute creating the levee district, the Act No. 74 of 1892 (page 98), all lands then belonging or that might thereafter belong to the State and embraced within the limits of the district were granted to the Board of Commissioners. And, by the same section of the statute, it was declared the duty of the State Auditor and of the Register of the State land office, on behalf and in the name of the State, to convey to the board of commissioners, by proper instruments of conveyance, all lands thereby granted or intended to be granted and conveyed to the board, whenever from time to time either the auditor or register should be requested to do so by the board of commissioners or by the president of the board. Sections 1 and 9 of the Act No. 74 of 1892 were amended and re-enacted by Act No. 160 of

1900 (page 242), but not so as to effect the title or status of the land in contest.

No certificate or instrument of conveyance of the land in question was issued by the State Auditor or Register of the land office to the board of commissioners of the levee district, nor was a certificate or instrument of conveyance requested by the board or by any officer of the board, until the defendant Mrs. Douglas had obtained and recorded a patent from the State purporting to convey the land to her.

Assuming ownership of the land, the board of commissioners sold it to one James L. Gilliam, in January, 1901, by warranty deed which was promptly recorded in the conveyance office of the parish where the land is situated. H. H. Huckaby, who, with the board of commissioners, is co-plaintiff or relator in this suit, holds title through mesne conveyance from James L. Gilliam.

Mrs. Douglas obtained her patent on the 18th of April, 1918. Nine days later, the board of commissioners of the levee district requested the register of the State land office to issue a deed of conveyance of the land to the board. The register replied that the land was not subject to transfer to the levee board, because a patent had been issued to Mrs. Douglas; the records of the land office having shown the land as vacant when she made application for it."

We quote the conclusion of Mr. Justice O'Neil on this statement of facts:

"When the State had, by the statute creating the Caddo levee district, agreed to transfer to the board any and all lands within the district, the officers of the land department had no authority to issue a patent to any one else for land within the district. Any land in the district, appearing vacant on the records of the land office, was subject at all times to be claimed by the board of commissioners, so long as the grant was not repealed by legislative act. See *Hall vs. Board of Commissioners of Bossier Levee District*, 111 La. 913, 35 South, 976; *Hartigan vs. Weaver*, 126 La. 492, 52 South, 674; and *State ex rel. Atchafalaya Basin Levee Board vs. Capdeville, Auditor*, 142 La. 111, 76 South, 327; *Atchafalaya Land Co. vs. Grace*, 143 La. 637, 79 South, 173. The ruling in *McDade vs. Bossier Levee District*, 109 La. 625, 33 South, 628, and in *Hall vs. Board of Commissioners*, 111 La. 913, 35 South, 976, as modified by the opinion delivered on the application for rehearing, is in accord with the opinion expressed here; and we find nothing to the contrary in *State vs. Cross Lake S. & F. Club*, 123 La. 208, 48 South 891."

We will not burden the Court with the discussion of the decision of the State Court in the instant case. We have adopted the argument in the original brief. But may we accentuate the fact, that the Board of Commissioners of the Atchafalaya Basin Levee District is before this Honorable Court applying with its obligation to secure to petitioners their rights, and it seeks to do so in accordance with the

usual manner in which the contract has been executed these many years, that is: to secure title to its transferee when ever required to do so; and in the decision quoted above and of very recent date, that obligation is as alive to-day as when first executed.

It is prayed that the Judgment of the Supreme Court of Louisiana be avoided and that of the Nineteenth Judicial District Court reinstated.

JACOB H. MORRISON,

CHARLES F. CONSAUL,

Of Counsel for Intervenor, Plaintiff in Error, Board of
Commissioners of the Atchafalaya Basin Levee District.

Office Supreme Court, U.

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WM. R. STANBRO

No. 106

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1921.

**ATCHAFALAYA LAND COMPANY, LIMITED;
SCHWING LUMBER & SHINGLE COM-
PANY, LIMITED, AND THE BOARD OF
COMMISSIONERS OF THE ATCHA-
FALAYA BASIN LEVEE
DISTRICT,**

Plaintiffs in Error,

versus

F. B. WILLIAMS CYPRESS COMPANY, LIMITED.

In Error to the Supreme Court of the State of Louisiana

**Brief for F. B. WILLIAMS CYPRESS COMPANY,
LIMITED, Defendant in Error.**

**CHARLES F. BORAH,
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Attorneys for Defendant in Error.**



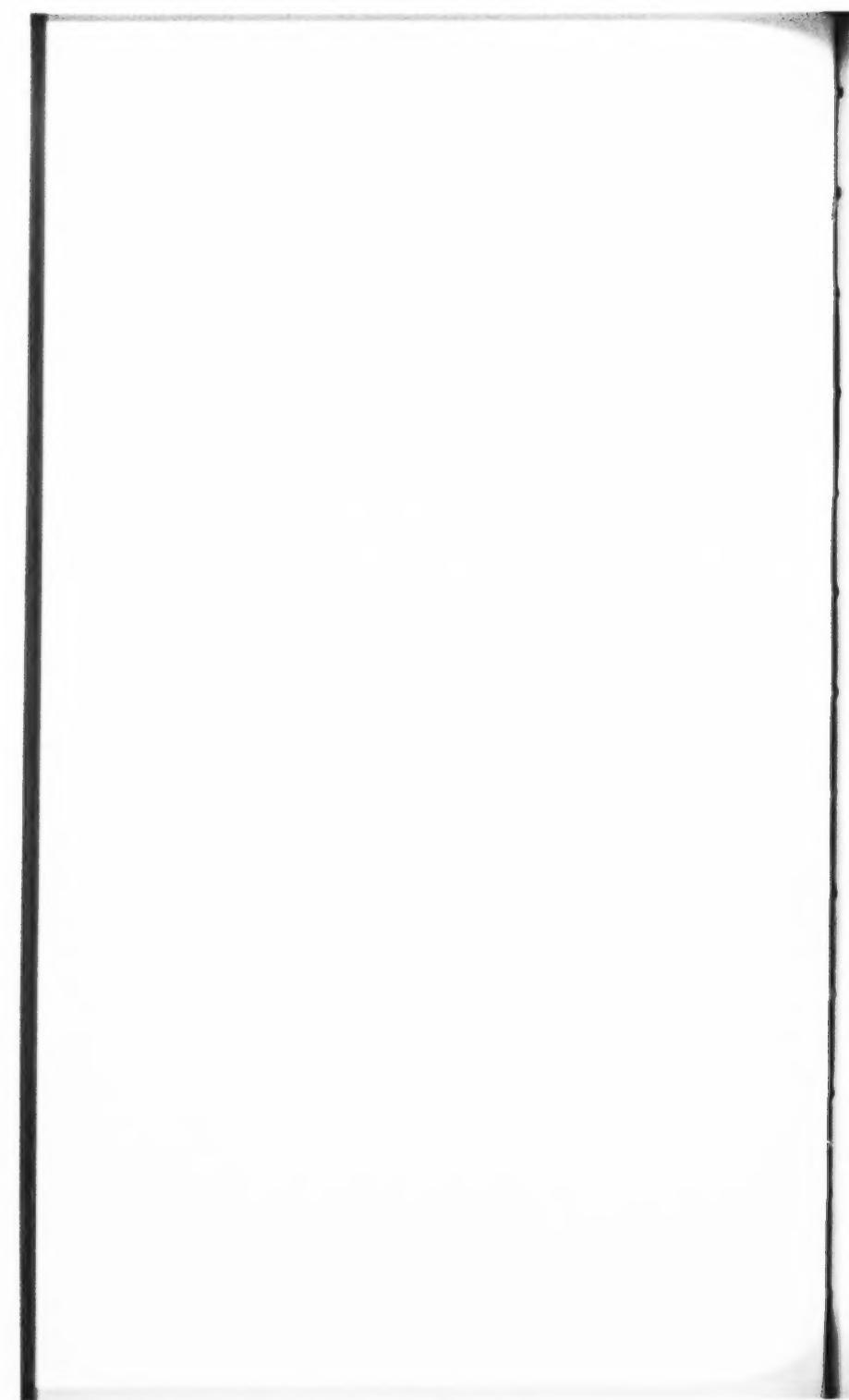
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**Brief for F. B. WILLIAMS CYPRESS COMPANY,
LIMITED, Defendant in Error.**

ISSUES IN THE CASE.

The only issue in this case in this Court, as presented by the three Assignments of Error, (Record, pp. 142-145), is whether, as applied to the facts of this case, Act 62 of Louis-

iana Acts of 1912, (providing that no suit by the State of Louisiana or any private corporation, partnership, or person to vacate and annul any patent issued by the State of Louisiana, shall be brought after six years after the issuance of the patent, or after six years from the passage of the Act, as to patents previously issued), impairs the obligation of a contract in contravention of Section 10, Article 1, of the Constitution of the United States, or takes property without due process of law, in contravention of the Fourteenth Amendment.

STATEMENT OF FACTS.

This is a suit by the Atchafalaya Land Company, Ltd., (in which the Schwing Lumber & Shingle Company, Ltd., and the Board of Commissioners of the Atchafalaya Basin Levee District, intervened) against the F. B. Williams Cypress Company, Ltd., to have certain land patents issued by the State of Louisiana to defendant's authors in title, declared null and void.

Six patents in all are involved, covering an aggregate of approximately forty-two hundred acres of land. Four of the patents were issued in September, 1890, and the remaining two were issued in November, 1890. All of the patents were regularly issued in accordance with the general land law of the State, for the cash consideration prescribed by those laws, which at that time represented the valuation then currently placed upon swamp lands, such as these were.

This suit was brought in April, 1919, almost thirty years after the issuance of the patents.

In the agreed statement of facts upon which the case was submitted below, it was **admitted** that the patents were duly and seasonably recorded in the State Land Office, and in the Parishes in which the lands covered thereby lay, and that the deeds from the patentees to the present defendant were similarly seasonably recorded. Record, p. 93.

It was further **admitted** that the defendants and their authors in title, immediately after the issuance of the patents, went into possession of the lands covered thereby, and exercised acts of ownership thereon, causing the timber thereon to be cruised, estimated and marked, canals to be dug, timber to be actually cut and removed from the lands, and other open and notorious acts of possession to be exercised, all of which things were continuously done from the granting of the patents up to the time of the filing of the suit. Record, pp. 92, 93, 60, 61.

It was also **admitted** that the defendants and their authors in title have paid taxes upon the lands involved in the suit continuously since 1890, and that neither the plaintiff Land Company nor the Schwing Lumber & Shingle Company, Ltd., ever asserted any claim to the land or timber here involved, or attempted to exercise any acts of possession thereon, prior to the institution of this suit. Record, pp. 93, 94, 60, 61.

The lands in question were acquired by the State of Louisiana from the United States under the swamp land grants, Acts of Congress of March 2, 1849, (9 Stat. 352, c. 87), and of September 28, 1850 (9 Stat. 519, c. 84, U. S. Comp. Stats., Sections 4958-4960). By Act No. 97 of 1890, (p. 107), approved July 8, 1890, the State of Louisiana provided for the organization of the Board of Commissioners of the Atchafalaya Basin Levee District and the conveyance to the Board of all lands belonging to the State of Louisiana within the limits of said district. Section 11 of this Act containing the provisions relevant to this suit, is copied in an appendix hereto, and contains (after general provisions for the grant of lands) the following language (black letters throughout this brief are ours unless otherwise specifically noted):

"After the expiration of said six months, it shall be the duty of the Auditor and the Register of the State Land Office, on behalf and in the name of the States, to convey to the said Board of Levee Commissioners, by proper instruments of conveyance, the lands hereby granted or intended to be granted and conveyed to said board, whenever, from time to time, said Auditor and said Register of the State Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners, or by the president thereof; and thereafter said president of said board shall cause said conveyances to be properly recorded in the recorder's office of the respective parishes wherein said lands are or may be located; and, when said conveyances are so recorded, the title to said land, with the possession thereof, shall thenceforth vest absolutely in

said Board of Levee Commissioners, its successors or grantees; said lands shall be exempted from taxation **after being conveyed** to and while they remain in the possession or under the control of said board."

No conveyance was ever made by the Auditor or the Register of the State Land Office to the Board of Levee Commissioners of the Atchafalaya Basin Levee District, covering the lands involved in this suit. All of these lands were, on the contrary, patented to the defendant's authors in title, by patents duly signed by the Register of the State Land Office and the Governor of the State, issued within two to four months after the passage of Act 97 of 1890, and promptly put on record in the Land Office and in the Parishes where the land lay. Record, pp. 68 to 81.

The claim of the plaintiffs is, therefore, not supported by any deed out of the State.

The plaintiffs rest their claim upon a contract made by the Board of Commissioners of the Atchafalaya Basin Levee District, on July 9, 1900, (Record, p. 19), by which the board sold to one Edward Wisner and one J. M. Dresser, by quit-claim deed, all of the lands then owned by the board, including all lands to which the board could then "lay just claim," for the purchase price of \$120,000.00. Of this price \$25,000.00 was paid in cash and the remaining \$95,000.00 was payable in two equal semi-annual installments. The agreement provided that it should not be con-

sidered a complete or perfected sale, but **only in the nature of an agreement to sell**, until the full sum of \$120,000.00 had been paid; that meanwhile the Levee Board should make title from time to time to persons designated by Wisner and Dresser, provided that the price of such sales should be not less than one dollar per acre for tax lands and twenty-five cents per acre for marsh lands.

No specific lands were described in this contract. From time to time, however, specific lands, **for which deeds from the State had been obtained by the Levee Board**, were by the Board conveyed to specific individuals designated by Wisner and Dresser. No lands for which no deeds had been obtained from the State were ever so conveyed.

No deed to the particular land involved in this controversy was ever executed by the Levee Board to anyone. In November, 1907, by two deeds, Wisner and Dresser and the South Louisiana Land Company, and the North Louisiana Land Company, corporations which they had organized, sold to the Schwing Lumber & Shingle Company, (intervenors in this suit), all of the cypress timber on certain specially described tracts of land in the parishes of Iberia and St. Martin. The lands involved in this suit were not described in either deed. Each deed, however, contained a general clause providing that it should cover all of the lands owned by the vendors in the parishes in question. Record, pp. 41-51.

In December, 1908, by two deeds, the South Louisiana Land Company sold the plaintiff, the Atchafalaya Land Company, Ltd., several tracts of land specifically described in the Parishes of Iberia and St. Martin. The lands in controversy here were not described in either deed, but each deed contained a provision that the vendor sold all of its lands in Iberia Parish and St. Martin Parish, "whether included in the deed by definite description or not, reference being made to the record books of said parishes for said description." Record, pp. 32-34. The record books of the two parishes, however, did not show any deed to the vendor describing the lands involved here.

PLEADINGS AND DEFENSES.

The plaintiff, Atchafalaya Land Company, Ltd., after setting up the derivation of its claims, prayed that the patents to Williams (defendant's author in title) be declared "absolutely null and void." The plaintiff further prayed that the Levee Board be cited to join in its demand for the annulment of said patents. Record, pp. 8-9.

The Levee Board filed a pleading termed an "answer and intervention," joining in the plaintiff's prayer for annulment of the patents. Record, pp. 10-12. The Schwing Lumber & Shingle Company intervened in the suit, setting up ownership of the timber on the lands in controversy here and likewise joining in the prayer for annulment of the defendant's patents. Record, p. 52. The claims of plaintiff and intervenors were based upon the theory that

the patents to the defendant's authors in title were invalid because of the provision in Act No. 97 of 1890 looking to the conveyance of lands within the Atchafalaya Basin Levee District to the Board of Commissioners of that District.

The defenses set up by the defendant, so far as now pertinent, may be thus summarized.

(1). That the provisions of Act 97 of 1890 did not amount to a grant *in praesenti*, but on the contrary, clearly and expressly contemplated that no title should pass to the Levee Board **until** a formal deed had been executed by the Auditor and the Register of the State Land Office in favor of the board, and recorded, and that no such deed had been executed or recorded in this case, and, therefore, no title was shown in the Levee Board or in the plaintiff claiming under the board. In the absence of such a deed there was no contract or property right in the Levee Board, but the lands remained within the control of the State, which might make other disposition thereof. This contention was supported by the decisions of the Supreme Court of Louisiana in *McDade v. Bossier Levee Board*, 109 La. 625, and *State v. Cross Lake Shooting & Fishing Club*, 123 La. 298. (See *Cross Lake Shooting & Fishing Club v. State of Louisiana*, 224 U. S. 632).

(2). That under Section 11 of Act 97 of 1890, it was specifically provided that no land should be conveyed to the Levee Board for a period of six months after the passage of the Act, and that within this period of six months the

lands within the district were subject to disposition under the general land laws of the State, and that, therefore, the patents to defendant's authors in title, all of which were issued within six months after the passage of Act 97 of 1890, were valid *ab initio*, and the lands covered thereby were permanently removed from any potential operation of Act 97 of 1890, and any potential claim of the Levee Board or its grantees. This contention was likewise supported by the decision of the Supreme Court of Louisiana in *State v. Cross Lake Shooting & Fishing Club*, 123 La. 208.

(3). That this suit by the plaintiff and the intervenors to vacate and annul the patents under which the defendant claimed was barred by the provisions of Act 62 of 1912, of the General Assembly of the State of Louisiana, approved July 5th, 1912, which provides:

"Be it enacted by the General Assembly of the State of Louisiana:

"That all suits or proceedings of the State of Louisiana, private corporations, partnerships or persons, to vacate and annul any patent issued by the State of Louisiana, duly signed by the Governor of the State and the Register of the State Land Office and of record in the State Land Office, or any transfer of property by any subdivision of the State, shall be brought only within six years of the issuance of patent, provided that suit to annul patents previously issued shall be brought within six years from the passage of this Act."

The present suit was filed on the 26th of April, 1919, approximately six years and ten months after the passage of Act 62 of 1912, nearly nineteen years after the contract between Wisner and Dresser and the Levee Board, and almost thirty years after the patents to defendant's authors in title had been issued and recorded in the Land Office and in the Parishes of Iberia and St. Martin.

The Supreme Court of Louisiana maintained the defense based upon the statute of limitations established by Act 62 of 1912, and dismissed the suit accordingly. The Court recognized that in the case of *State v. Cross Lake Shooting & Fishing Club*, 123 La. 208, it had been held that Act 97 of 1890, Section 11, was not a grant *in praesenti*, and that under the provisions of said Act the lands involved here were not open to conveyance to the Levee Board until the expiration of six months from the passage of the Act, from which it followed within that period the lands were open to patent, and properly and regularly patented to defendant's authors, and that their title was at all times elder and superior to any claims derived from the Levee Board. The Court, however, rested its decision upon the provisions of Act 62 of 1912, by which, even if defendant's patents were originally unauthorized, any attack thereon was barred by plaintiff's failure to make such attack within the six years allowed by the statute. The constitutionality of the Louisiana statute was maintained upon two grounds, (a) that it was a statute of limitations which afforded a reasonable opportunity for the assertion of existing claims,

and, (b) that the provisions of Act 97 of 1890 did not establish any contract or property right in the Levee Board beyond the subsequent control of the State.

See *Atchafalaya Land Company v. F. B. Williams Cypress Company*, 146 La. 1047. Record in this case, pp. 97 to 108.

The case was brought to this Court from the Supreme Court of Louisiana upon three Assignments of Error, by which it is claimed that Act 62 of the Louisiana laws of 1912 impairs the obligation of a contract and takes property without due process of law, in contravention of Article I, Section 10, and Amendment XIV of the Constitution of the United States.

ARGUMENT.

I.

General Character and Effect of Louisiana Act 62 of 1912.

Act 62 of the Louisiana laws of 1912 is analogous to the Federal Act of March 3, 1891, c. 561, Sec. 8, 26 Stat. 1099, U. S. Compiled Stat. (1916) 5114. The Louisiana Act, however, goes distinctly farther, in that it applies not merely to suits by the sovereign, but also to suits **by any private corporation, partnership or person**, and provides that any suit, **by whomsoever brought**, to set aside a patent issued by the State of Louisiana, shall be barred by a limitation of six years. The effect of the Federal Statute is to make all patents, however defective or invalid originally,

good against the sovereign after the lapse of six years, as if valid in the first place. Compare the language of this Court in *U. S. v. Chandler-Dunbar Water Power Company*, 209 U. S. 447, where the Court said at pages 449-450:

"There is force in the contention of the United States that the land was reserved and that it had not been surveyed, but we find it unnecessary to state or pass upon the arguments, because we are of opinion that now the patent must be assumed to be good. The statute just referred to provides that 'suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this Act,' that is to say from March 3, 1891. This land, whether reserved or not, was public land of the United States and in kind open to sale and conveyance through the Land Department. *United States v. Winona & St. Peter R. R. Co.*, 165 U. S. 463, 476. The patent had been issued in 1883 by the President in due form and in the regular way. Whether or not he had authority to make it, the United States had power to make it or to validate it when made, since the interest of the United States was the only one concerned. We can see no reason for doubting that the statute, which is the voice of the United States, had that effect. It is said that the instrument was void and hence no patent. But the statute presupposes an instrument that might be declared void. When it refers to 'any patent heretofore issued,' it describes the purport and source of the document, not its legal effect. If the Act were confined to valid patents it would be almost or quite without use. *Leffingwell v. Warren*, 2 Black, 599.

"In form the statute only bars suits to annul the patent. But statutes of limitation, with regard to land at least, which cannot escape from the jurisdiction, generally are held to affect the right even if in terms only directed against the remedy. *Lefingwell v. Warren*, 2 Black, 599, 605; *Sharon v. Tucker*, 144 U. S. 533; *Davis v. Mills*, 194 U. S. 451, 457. This statute must be taken to mean that the patent is to be held good and is to have the same effect against the United States that it would have had if it had been valid in the first place. See *United States v. Winona & St. Peter R. R. Co.*, 165 U. S. 463, 476."

Under the terms of the Louisiana Act, after the lapse of six years the patent is to be held good and to have the same effect, not only against the State, but against all persons whomsoever, that it would have had if valid in the first place.

This disposes of the case unless the Federal Constitution prohibits a State from adopting such a statute of repose.

II.

Louisiana Act 62 of 1912 is a constitutional statute of limitations affording a reasonable time for the assertion of existing claims. Its provisions do not impair the obligation of any contract nor do they take property without due process of law, within the inhibition of the Federal Constitution.

Statutes of repose have always been favored by the policy of the law. If the contention of the plaintiffs in error

in this case were maintained it would never be possible for the Legislature to establish a **statute** of limitation to apply to rights or causes of action which **had** already accrued. An unbroken line of decisions in this Court negatives such a contention. Statutes of limitation may constitutionally apply to existing contracts and causes of action, as well as to contracts and causes of action thereafter arising, subject only to the condition that reasonable time be allowed after the passage of the statute within which to assert claims then in existence. The statute here involved allowed six years for that purpose. Periods as short as six **months** have been held reasonable and statutes permitting no **greater time than** that for the institution of suits on existing causes of action have been maintained as constitutional. The books abound with cases in which periods less than six **years** for the institution of suit on existing claims have been upheld; nor is there any reason to the contrary. If six years were not a reasonable time, what would be?

It is sufficient merely to refer to the more conspicuous decisions in this Court on the subject.

The general doctrine recognizing the power of State legislatures to pass acts of limitation by which elder grants are postponed to younger ones unless certain acts are performed in a limited time goes back at least to *Jackson v. Lamphire*, 3 Peters, 280, decided at the 1830 term, where the Court said:

Jackson v. Lamphire, 3 Peters, 280:

"It is within the undoubted power of State legislatures to pass recording acts, by which the elder

grantee shall be postponed to a younger, if the prior deed is not recorded within the limited time; and the power is the same whether the deed is dated before or after the passage of the recording act. Though the effect of such a law is to render the prior deed fraudulent and void against a subsequent purchaser, it is not a law impairing the obligation of contracts; **such, too, is the power to pass acts of limitations, and their effect.** Reasons of sound policy have led to the general adoption of laws of both descriptions, and their validity cannot be questioned. The time and manner of their operation, the exceptions to them, and the acts from which the time limited shall begin to run, will generally depend on the sound discretion of the legislature, according to the nature of the titles, the situation of the country, and the emergency which leads to their enactment."

The leading case is probably *Terry v. Anderson*, 95 U. S. 628, where the rule applicable in the present case is thus stated:

"An enactment reducing the time prescribed by the statute of limitations in force when the right of action accrued, is not unconstitutional, provided a reasonable time be given for the commencement of a suit before the bar takes effect."

The Court said, at p. 632:

"The Court has often decided that statutes of limitation affecting existing rights are not unconstitutional, if a reasonable time be given for the commencement of an action before the bar takes

effect. *Hawkins v. Barney*, 5 Pet. 451; *Jackson v. Lamphire*, 3 Id. 280; *Sohn v. Watertown* 17 Wall. 596; *Christmas v. Russell*, 5 Id. 290; *Sturges v. Crowninshield*, 4 Wheat. 122. It is difficult to see why, if the Legislature may prescribe a limitation where none existed before, it may not change one which has already been established. **The parties to a contract have no more a vested interest in a particular limitation which has been fixed, than they have in an unrestricted right to sue.** They have no more a vested interest in the time for the commencement of an action than they have in the form of the action to be commenced; and as to the forms of action or modes of remedy, it is well settled that the Legislature may change them at its discretion, provided adequate means of enforcing the right remain.

“In all such cases, the question is one of reasonableness, and we have, therefore, only to consider whether the time allowed in this statute is, under all the circumstances, reasonable. Of that the **Legislature is primarily the judge; and we cannot overrule the decision of that department of the government, unless a palpable error has been committed.** In judging of that, we must place ourselves in the position of the legislators, and must measure the time of limitation in the midst of the circumstances which surrounded them, as nearly as possible; for what is reasonable in a particular case depends upon its particular facts.

“Here, nine months and seventeen days were given to sue upon a cause of action which had already been running nearly four years or more.”

The Court held the statute constitutional.

How much stronger is the present case where six years were given to enforce a cause of action which had already been running over twenty years!

In *Vance v. Vance*, 108 U. S. 514, the Supreme Court of the United States had before it a case which also came up from Louisiana, involving the validity of the provisions of the Louisiana Constitution of 1868. Before the adoption of that Constitution, tacit mortgages and privileges were not required to be recorded in order to be effective against third persons. The Constitution of 1868 changed this rule **and made the change apply even as to pre-existing mortgages and privileges**, by the provision that all such pre-existing mortgages and privileges must be recorded before the first of January, 1870. The same attack was made upon this provision as is made here upon Act 62 of 1912—that such legislation could not constitutionally be applied to existing rights since (as it was claimed) it would operate to divest them without due process of law and to impair the obligation of the contract which they evidenced. The Supreme Court of Louisiana decided that the contention was not well taken and that the provision was constitutional. See *Vance v. Vance*, 32 An. 186. An appeal was taken to this Court, which affirmed the judgment, saying, at p. 518:

“We think that the law, in requiring of the owner of this tacit mortgage, for the protection of innocent persons dealing with the obligor, to do this much

to secure his own right, and protect those in ignorance of those rights, **did not impair the obligation of the contract, since it gave ample time and opportunity to do what was required** and what was eminently just to everybody."

So, in the present case, Act 62 of 1912, gave ample time and opportunity to do what was required and just.

After citing *Curtis v. Whitney*, 13 Wall. 68, *Louisiana v. New Orleans*, 102 U. S. 203, and *Jackson v. Lamphire*, 3 Pet. 280, the Court said in the case last cited:

"The decisions in regard to the statute of limitation are full to the same purpose, and as the Supreme Court of Louisiana says, **this is a statute of limitation, giving a reasonable time within which the holder of one of these secret liens may make it public**, otherwise it will be void against subsequent purchasers and creditors without notice."

In *Wheeler v. Jackson*, 137 U. S. 245, 34 L. Ed. 659, the plaintiff had acquired some 1,300 pieces of property in Brooklyn at tax sale under the provisions of statutes of 1854 and 1873, which gave the tax debtor two years in which to redeem his property by returning to the purchaser the amount paid, together with taxes subsequently paid, and 15 per cent per annum interest added. If the owner failed to redeem within two years, the purchaser could demand a conveyance or lease according to the terms of his purchase, and obtain possession by summary proceeding.

Subsequently, by an act dated June 6, 1885, the Legislature of New York provided that all tax sales made more than eight years prior to the passage of the act should be cancelled unless certain special proceedings should be commenced thereon **within six months** after the date of the act. Wheeler's purchases had all been made more than eight years before the passage of the Act of 1885. He failed, however, to bring a special proceeding within six months as provided by said Act and his deeds were about to be cancelled when he brought suit to enjoin said cancellation, alleging that none of the lots purchased by him had been redeemed from sale, that he was still the legal owner and holder of the certificates issued at the time of purchase, and that the Act of 1885 was unconstitutional and divested him of a valid contract upon the faith of which he had paid large sums of money for taxes to the State.

This Court said (*137 U. S. at 254, 255*):

"As none of the lots purchased were redeemed, the plaintiff became entitled, when the time for redemption passed, to a lease of each lot for the term of years specified in the respective certificates of sale. Now, the right to such leases was not taken away by the Act of 1885. Nothing in that act prevented the plaintiff from obtaining them on the day after its passage. * * *

"It is the settled doctrine of this Court that the Legislature may prescribe a limitation for the bringing of suits where none previously existed as well as shorten the time within which suits to enforce

existing causes of action may be commenced, provided, in each case, 'a reasonable time, taking all the circumstances into consideration, be given by the new law for the commencement of suit before the bar takes effect. * * * **We cannot say that the limitation prescribed by the Act of 1885 is unreasonable when applied to those who neglected for eight years prior to its passage to demand the conveyances or leases to which they were entitled.'**"

Again the Court said (at p. 255):

"But whatever may have been the reasons that induced the enactment of the statute of 1885, the period within which actions must be brought was a matter resting primarily with the legislative department of the State government; and as Statutes of Limitation have for their object, and are deemed necessary to, the repose and security of society, the determination of that department should not be interfered with by the Courts, unless the time allowed to bring suits upon existing causes of action, is, in view of all the circumstances, so short as not to give parties affected by it a reasonable opportunity to protect their rights under the new law."

And at p. 257, the Court said:

"What has been said is sufficient to dispose of the additional suggestion to the effect that the cancellation of the record of sales at which the plaintiff purchased deprived him of his property without due process of law, in violation of the Fourteenth Amendment. He asserts a proprietary right in such rec-

ord for what it was worth. But, if the observations made by us in respect to the first point be sound, he had no such right, after permitting the period to elapse within which he could bring suit to compel the execution of a conveyance or lease. **A statute of limitation cannot be said to impair the obligation of a contract, or to deprive one of property without due process of law, unless, in its application to an existing right of action, it unreasonably limits the opportunity to enforce that right by suit."**

In *Phalen v. The Commonwealth of Virginia*, 8 How. 163, 12 L. Ed. 1030, where it was contended that the right under a contract to raise money for roads by a lottery had been abrogated by subsequent legislation, the Court at p. 1032, said:

"It has been often decided by this Court, that the prohibition of the constitution now under consideration, by which State Legislatures are restrained from passing any 'law impairing the obligation of contracts,' does not extend to all legislation about contracts. They may pass recording acts, by which an elder grantee shall be postponed to a younger, if the prior deed be not recorded within a limited time; and this, whether the deed be dated before or after the act. Acts of limitation also, giving peace and confidence to the actual possessor of the soil, and refusing the aid of Courts of Justice in the enforcement of contracts, after a certain time, have received the sanction of this court. **Such acts may be said to effect a complete divesture, or even transfer, of right, yet, as reasons of sound policy**

have led to their adoption, their validity cannot be questioned."

In *Town of Koshkonong v. Burton*, 104 U. S. 668, 26 L. Ed. 887, the Town of Koshkonong, on the first day of January, 1857, issued its coupon bonds payable in January, 1877, with interest payable semi-annually, some of which found their way into the hands of the plaintiff, who in May, 1880, filed suit thereon. When the bonds were issued the prescription applicable to such obligations was twenty years. The State of Wisconsin, in 1872, reduced the period of prescription to six years. The plaintiff had not collected any of the interest coupons as they matured, and this latter prescription was pleaded against the recovery of such coupons as were six years overdue. It was contended that the Act of 1872 reducing the prescription period from twenty to six years was unconstitutional; but the Court, at page 889, said:

"It was, undoubtedly, within the constitutional power of the Legislature to require, as to existing causes of action, that suits for their enforcement should be barred unless brought within a period less than that prescribed at the time the contract was made or the liability incurred from which the cause of action arose. The exertion of this power is, of course, subject to the fundamental condition that a reasonable time, taking all the circumstances into consideration, be given by the new law for the commencement of an action before the bar takes effect. *Terry v. Anderson*, 95 U. S. 633, 24 L. Ed. 365 * * *."

Again the Court said:

"There is no escape from this conclusion, unless we should hold that the Legislature could not, constitutionally, reduce limitation from twenty to six years as to existing causes of action. **But, neither upon principle nor authority, could that position be sustained.**"

In *Leffingwell v. Warren*, 67 U. S. 599, 17 L. Ed. 261, it was contended that a statute of Wisconsin which provided that:

"Any suit or proceedings for the recovery of lands sold for taxes, except in cases where the taxes have been paid or the lands redeemed as provided by law, shall be commenced within three years from the time of recording the tax deed of sale, and not thereafter,"

was not constitutional. The Court held otherwise, saying:

"The lapse of the time limited by such statute not only bars the remedy, but it extinguishes the right, **and vests a perfect title in the adverse holder.**"

In *Turner v. State of New York*, 168 U. S. 92, 42 L. Ed. 392, where the Court was again considering the effect of the New York statute of 1885, referred to in *Wheeler v. Jackson*, cited above, the Court, at p. 99, said:

"Independently of the consideration that before the passage of the statute the plaintiff had had eight years since the sale, and three years since the

recording of the deed, during which he might have asserted his title, this Court concurs with the highest Court of the State in the opinion that the limitation of **six months**, as applied to a case of this kind, is not repugnant to any provision of the Constitution of the United States."

"In regard to the States, which are expressly forbidden to impair by legislation the obligation of contracts, **it has been repeatedly held** that a statute of limitation, which reduced materially the time within which suits may be commenced, **though passed after the contract was made, is not void if a reasonable time is left for the enforcement of the contract by suit before the statute bars that right.** The **sole** question in such cases is whether the time is so unreasonably short as to amount to a destruction of the right itself, and so impairs the obligation of the contract. And it is the **settled doctrine** that the Legislature may prescribe a limitation for the bringing of suits where none previously existed, as well as shorten the time in which suits to enforce existing causes of action may be commenced, provided, in each case, a reasonable time, taking all circumstances into consideration, be given by the new law for the commencement of suit before the bar takes effect."

In *Edwards v. Kearzey*, 96 U. S. 595, and *Bank of Minden v. Clement*, 41 Sup. Ct. Rep. 408, upon which opposing counsel rely, the only question before the Court was the validity of a statute creating an exemption which did not exist at the time that the original debt was contracted.

The effect of this statute was to make it **immediately** impossible for the creditor to collect his debt without any opportunity whatsoever to him after the enactment of the statute to protect himself. The Court held that this could not be done constitutionally. As we have pointed out, this is an entirely different question from the one here presented. We have not involved here any question of exemptions of property from debt. The Legislature here did not undertake to provide that all suits attacking patents should be immediately barred. If it had undertaken to do so, its attempt would have properly failed. But it attempted nothing of the sort; it allowed six years after the passage of the act for the bringing of suit. The distinction is obvious between a statute of limitation which allows a reasonable time for the assertion of rights and a statute which undertakes to create immediately exemptions of a debtor's property. In the very opinion in *Edwards v. Kearzey*, the Supreme Court recognized the distinction between the case there presented and the case of a statute of limitation, going out of its way to expressly affirm and recognize the validity of statutes of limitation even as applied to existing causes of action. See p. 603, where the Court said:

"Statutes of limitation are statutes of repose. They are necessary to the welfare of society. The lapse of time constantly carries with it the means of proof. The public as well as individuals are interested in the principle upon which they proceed. They do **not** impair the remedy **but only require its application within the time specified**. If the period

limited be unreasonably short, and designed to defeat the remedy upon pre-existing contracts, which was part of their obligation, we should pronounce the statute void. Otherwise, we should abdicate the performance of one of our most important duties."

This is an explicit recognition by the Court in this very opinion of the validity of such a statute as is involved in the present case. There are numerous other recognitions by this Court that the doctrine of *Edwards v. Kearzey* does not apply to a statute of limitations which allows a reasonable period for the bringing of suit. Thus, in *Oshkosh Waterworks Company v. Oshkosh*, 187 U. S. 437, cited *supra*, the Court (citing *Edwards v. Kearzey*), thus stated the law:

"The general principles which must control in determining whether a State enactment impairs the obligation of contracts have become so firmly established by the decisions of this Court that any further discussion of their soundness would be inappropriate. It is only necessary to recall them, and then ascertain their applicability to the particular State legislation now alleged to be repugnant to the Constitution of the United States.

"It is well settled that while, in a general sense, the laws in force at the time a contract is made enter into its obligation, **parties have no vested right in the particular remedies or modes of procedure then existing.** It is true the Legislature may not withdraw all remedies, and thus, in effect,

destroy the contract; nor may it impose such new restrictions or conditions as would materially delay or embarrass the enforcement of rights under the contract according to the usual course of justice as established when the contract was made. Neither could be done without impairing the obligations of the contract. But it is equally well settled that the Legislature may modify or change existing remedies or prescribe new modes of procedure, without impairing the obligation of contracts, provided a substantial or efficacious remedy remains or is given, by means of which a party can enforce his rights under the contract. *Green v. Biddle*, 8 Wheat. 1, 85; *Bronson v. Kinzie*, 1 How. 311, 317; *Planters' Bank v. Sharp*, 6 How. 301, 327; *Walker v. Whitehead*, 16 Wall. 314, 317; *Murray v. Charleston*, 96 U. S. 432, 438; *Edwards v. Kearzey*, 96 U. S. 595, 601; *Vance v. Vance*, 108 U. S. 514, 518; *McGahey v. Virginia*, 135 U. S. 685, 693; *Barnitz v. Beverly*, 163 U. S. 118; *McCullough v. Virginia*, 172 U. S. 102, 104."

It will be noted that the Court expressly cited *Edwards v. Kearzey*, thereby again indicating how far the doctrine of that case is from governing a case like the present. In this case, certainly, a substantial and efficacious remedy remained after the passage of Act 62 of 1912, by means of which the present plaintiff and intervenor could, for a period of six years, have enforced all such rights as legally followed from the contract between Wisner & Dresser and the Atchafalaya Levee Board.

In *Davis v. Mills*, 194 U. S. 451 (at 456), Mr. Justice Holmes said:

"We come then to the question of power. It is said that a statute of limitations cannot take away an existing right but only remedies, and therefore that, whatever the effect of paragraph 554 on subsequently accruing liabilities, it cannot bar the plaintiff in this suit. * * * The only way in which it could be made out that the attempt to take away a remedy outside the State after the same lapse of time was unconstitutional is through the theoretical proposition which we have stated. It is said that remedies outside the State can be affected only by destroying the right, and that no statute of limitations can do that.

"It is quite incredible that such an unsubstantial distinction should find a place in constitutional law. Prescription which applies to easement the analogy of the statute of limitations unquestionably vests a title. There is no such thing as a merely possessory easement. A disseisor of a dominant estate may get an easement which already is attached to it, but the easement is attached to the land by title or not at all. Again, as to land the distinction amounts to nothing, because to deny all remedy, direct or indirect, within the State is practically to deny all right. 'The lapse of time limited by such statutes not only bars the remedy, but it extinguishes the right, and vests a perfect title in the adverse holder.' *Leffingwell v. Warron*, 2 Black 599, 605. So far as we have observed, the cases which have had occasion to deal with the matter

generally hold that the title to chattels, even, passes where the statute has run. *Campbell v. Holt*, 115 U. S. 620, 623; *Chapin v. Freeland*, 142 Massachusetts, 383, 386. Property is protected because such protection answers a demand of human nature, and therefore takes the place of a fight. But that demand is not founded more certainly by creation or discovery than it is by the lapse of time, which gradually shapes the mind to expect and demand the continuance of what it actually and long has enjoyed, even if without right, and dissociates it from a like demand of even a right which long has been denied. *Dunbar v. Boston & Providence Railroad*, 181 Mass. 383, 385. **Constitutions are intended to preserve practical and substantial rights, not to maintain theories.** It is pretty safe to assume that when the law may deprive a man of all the benefits of what once was his, it may deprive him of technical title as well. That it may do so is shown sufficiently by the cases which we have cited and many others.

"In the case at bar the question comes up in the most attenuated form. The law is dealing not with tangible property, but with a cause of action of its own creation. The essential feature of that cause of action is that it is one in the jurisdiction which created it; that it is one elsewhere is a more or less accidental incident. If the laws of Montana can set the limitation to the domestic suit, it is the least possible stretch to say that they may set it also to a foreign action, even if to that extent an existing right is cut down. We can see no constitutional obstacle in the way, and we are of opinion that they have purported to do it and have done it."

This is in itself an eloquent and complete refutation of plaintiff's contention in the present case that Act 62 of 1912 must be unconstitutional because it destroys a right.

In *Soper v. Lawrence Bros.* 201 U. S. 359, a statute of the State of Maine, passed in 1895, provided that after the lapse of twenty years no suit might be maintained by a former owner to recover wild lands against one who had paid taxes thereon and held "such possession as comports with the ordinary management of wild lands in Maine" with a proviso that the statute should not apply to actions begun before January 1, 1900. It was contended that the statute violated the Federal Constitution by divesting vested rights and taking property without due process. In discussing this contention, this Court said at p. 369:

"The discussion is narrowed, then, to the consideration of an action begun, as this was, after January 1, 1900, when the defendant has held that statutory possession for the five years following the act and for fifteen years before. If the plaintiff had brought a real action instead of the present suit, he would have been barred if the statute is good. The plaintiff says that the counting of the fifteen years before the enactment makes the statute bad. But suppose that the statute had enacted simply that if the conditions of § 1 should be maintained from the date of the act until January 1, 1900, and no action brought, the former owner should be barred, there can be no question that it would have been valid. **It was not and could not be argued that a statute of limitations allowing nearly five years would be**

unreasonably short. *Turner v. New York*, 168 U. S. 90; *Terry v. Anderson*, 95 U. S. 628. * * *

In the present case, the Louisiana Legislature allowed six years instead of the five which were allowed by the Maine statute. If, as said by this Court, it was not and could not be argued that a statute of limitations allowing nearly five years would be unreasonably short, certainly it cannot be argued here that a statute of limitations allowing six years is unreasonably short.

In *Montoya v. Gonzales*, 232 U. S. 375, a statute of New Mexico gave title to an adverse claimant after possession for ten years under a deed. It was claimed that the statute violated the Federal Constitution. In denying that contention, the Court said:

"It only remains to consider whether there is anything in the Constitution of the United States to prevent the statute from doing its work. We limit our inquiry to its operation in the present case, and do not speculate as to whether other cases could be put in which the letter of some parts of the law could not be sustained. As applied to the intervenors, the statute simply enacts that possession for ten years of the front and cultivable portion of a strip under a deed carrying the whole of it back to the ridge of the Puerco, shall give title to the whole. We can see no taking of property without due process of law in this. A statute of limitation may give title. *Toltec Ranch Co. v. Cook*, 191 U. S. 532; *Davis v. Mills*, 194 U. S. 451, 456, 457; *United States v.*

Chandler-Dunbar Water Power Co., 209 U. S. 447. The disseisee has notice of the law and of the fact that he is dispossessed, and that a deed to the disseisor may purport to convey more than is fenced in. **If he chooses to wait ten years without bringing suit, he is not in a position to complain** of the consequences—at least, not when, as in the present case, the deeds do not purport to convey more than a reasonable man probably would have anticipated. See *Soper v. Lawrence Brothers Co.*, 201 U. S. 359, 367, 368. * * *

So in this case if the plaintiff and intervenor chose to wait more than six years before bringing suit from the passage of the statute of the Act of 1912, they are not in a position to complain of the consequences. They had already had almost twenty years before the passage of that act.

In *Grant Timber Company v. Gray*, 236 U. S. 133, this Court upheld as not unconstitutional under the Fourteenth Amendment the provisions of Article 55 of the Louisiana Code of Practice, providing that one sued in a possessory action cannot bring a petitory action until after judgment shall have been rendered in the possessory action, and in case he shall have been condemned, until he shall have satisfied the judgment against him. In concluding its opinion, the Court said, through Mr. Justice Holmes, at page 135:

“The law of Louisiana requires uninterrupted possession for a year for the possessory action.

Civil Code, Arts. 3454, 3455. **If it had made a year the limitation for a petitory suit and had provided that the title should be lost in that time it would be hard to maintain that it had exceeded its constitutional power.** *Blinn v. Nelson*, 222 U. S. 1, 7; *Kentucky Union Co. v. Kentucky*, 219 U. S. 140, 156; *Turner v. New York*, 168 U. S. 90."

In *Canadian Northern Ry. Co. v. Eggen*, 252 U. S. 553 (April 19, 1920), this Court said:

"A man cannot be said to be denied, in a constitutional or in any rational sense, the privilege of resorting to Courts to enforce his rights when he is given free access to them for a length of time reasonably sufficient to enable an ordinarily diligent man to institute proceedings for their protection.

"This is the principle on which this Court has repeatedly ruled that contracts were not impaired in a constitutional sense by change in limitation statutes which reduced the time for commencing actions upon them, provided a reasonable time was given for commencing suit before the new bar took effect. *Sohn v. Waterson*, 17 Wall. 596; *Terry v. Anderson*, 95 U. S. 628, 632; *Tennessee v. Sneed*, 96 U. S. 69, 74; *Antoni v. Greenhow*, 107 U. S. 769, 774."

This, the latest language on this subject by this Court, shows its constant reiteration and recognition of the doctrine announced in *Jackson v. Lamphire*, 3 Peters 280, and applied in *Terry v. Anderson*, 95 U. S. 628, and all of the

other numerous authorities which we have cited. We, therefore, abstain from further multiplication of cases; but see 6 *Encyclopedia United States Supreme Court Reports* 884, 890; 5 *Ibid* 589; 4 *Ibid*. 446; *Cooley's Constitutional Limitations*, (7th ed.) 520-1; and (literally) hundreds of State cases cited in 7 *Lawyers Reports Annotated, New Series* 714, and in Rose's Notes (Revised Edition) to *Jackson v. Lamphire*, 3 *Peters* 280, and to the other decisions of this Court cited in this brief.

What has been said is sufficient to dispose of the case, even conceding that plaintiff and intervenors originally had valid and complete title out of the State. By their inactivity beyond the period prescribed by the Louisiana Legislature acting within its constitutional authority, they are barred from disturbing the defendant. This ground is so clear that we restrict within briefer compass our discussion of the other grounds upon which the decision below is also to be supported and which, for professional interest and completeness of treatment, we feel bound to notice.

III.

Act 97 of Louisiana Acts, 1890, not being a grant *in praesenti*, no contract was thereby established; and there was no contract right for impairment, and no property right for divestiture. The lands referred to therein remained within the State's control and the patents issued within six months to defendant's authors were valid *ab initio*.

Under the provisions of Act 97 of 1890, as construed by the Supreme Court of Louisiana (*State v. Cross Lake Shooting & Fishing Club*, 123 La. 208, affirmed *Cross Lake Shooting & Fishing Club v. State of Louisiana*, 224 U. S. 632; see also *McDade v. Bossier Levee Board*, 109 La. 625), there was no grant *in praesenti* to the Levee Board, but merely a provision that the lands within the Levee District should **after the expiration of six months** be deeded to the Levee Board. Until deeds were made to the Levee Board and recorded as provided by this act, no title passed, but the land remained entirely within the control of the State; and patents to third persons issued within six months were valid *ab initio*.

This conclusion follows necessarily from a consideration of that portion of the language of Section 11, Act 97 of 1890, (the entire section being printed in the appendix hereto) which provides:

"After the expiration of said six months, it shall be the duty of the Auditor and the Register of the State Land Office, on behalf of and in the name of the State, to convey to the said Board of Levee Commissioners, by proper instruments of conveyance, the lands hereby granted or intended to be granted and conveyed to said Board, whenever from time to time said Auditor and said Register of the State Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners, or by the President thereof, and thereafter said President of said Board shall cause said conveyances to be properly recorded in the convey-

ance office of the respective parishes wherein said lands are or may be located, **and when said conveyances are so recorded**, the title to said land with the possession thereof shall **from thenceforth** vest absolutely in said Board of Levee Commissioners, its successors or grantees; said lands shall be exempted from taxation **after being conveyed to** and while they remain in the possession of or under the control of said Board."

It is impossible, upon a mere reading of this language, to escape the conclusions:

(1) That until a deed is made to the Levee Board and recorded in the parish where the land lies, no title is to vest absolutely in the Levee Board;

(2) That such deed shall not be made until after the expiration of six months.

It must, therefore, follow that, within the six months following the enactment of the act, it was contemplated by the Legislature that other disposition of the lands might be made.

It was entirely reasonable, and, indeed, only just to so provide. For some months after the passage of the law (the primary establishment of which was the organization of a levee board and not the **grant** of land), it was reasonable to suppose that parties dealing with State lands would not be familiar with the proposed disposition in favor of

the levee board; and it was reasonable and fair to provide that in that interval the State officials should be free to continue to dispose of the land in accordance with the general laws of the State. Whatever the reason, the law is plain, as the Supreme Court of Louisiana directly decided in *State v. Cross Lake Shooting and Fishing Club*, 123 La. 208; (see *Cross Lake Shooting & Fishing Club v. State of Louisiana*, 224 U. S. 632.) In that case the facts were these:

By Act 74 of 1892 the Louisiana Legislature organized the Caddo Levee District, and provided for the conveyance to it of lands within the district by language identical with that employed in Act 97 of 1890, organizing the Atchafalaya Basin Levee District, which is involved here. By Act 171 of 1902, p. 324, the Legislature directed the Register of the State Land Office, with the approval of the Governor, to sell certain specifically described lands in Caddo Parish, which were within the limits of the Caddo Levee District. Section 4 of the act contained the following provision:

"Section 4: Be it further enacted, etc., that Act No. 74 of the General Assembly of Louisiana for 1892, and Act No. 160 of the acts of 1900 be and the same are hereby repealed insofar as they may in any way whatever affect any of the lands described herein, the same never having been transferred by the Register of the State Land Office and the State Auditor, nor either of them, by any instrument of conveyance from the State as required by said act to complete title to same."

Seven years **prior** to the passage of this act, the Board of Commissioners for the Caddo Levee District had conveyed the lands in question to the Cross Lake Shooting & Fishing Club by deed specifically describing the same. After the passage of Act 171 of 1902, revoking the grant to the Levee Board, the Attorney General brought a suit **against** the Cross Lake Shooting & Fishing Club to recover the lands described in the act. The defense of the club was based upon the same grounds as that taken by the plaintiffs here, namely, that the act organizing the levee district operated as a complete grant in favor of the levee board, which the Legislature could not repeal or divest to the prejudice of the grantee of the board. The Supreme Court of Louisiana decided that the act organizing the levee district did not operate as a grant *in praesenti*, and that no title passed out of the State until the **execution and recordation** of a formal conveyance, stating its decision as follows:

"Under Act No. 74, p. 95 of 1892, and Act No. 160, p. 242, of 1900, the grant of lands made by the State to the Board of Commissioners of the Caddo Levee District is not a grant *in praesenti*, but is intended to vest in the grantee a disposable title only when proper instruments of conveyance executed by the State Auditor and the Register of the State Land Office are recorded in the parishes where the lands lie. Hence a sale of such lands by the board prior to the registering of such conveyance is *void*, and the party attempting to purchase is liable to eviction at the suit of the State."

The argument was made that the provision in the levee board act that land should not be deeded to the board within a period of six months after the passage of the act should be restricted to tax lands (title to which the State had acquired at tax sale), and should not be applied to swamp lands (derived by the State from the United States directly). The Court denied the argument, saying at p. 215 of 123 La.:

"Counsel for defendant concede that the statutory provisions upon the subject of the execution and registry of acts of conveyance relate to the lands acquired by the State by reason of the non-payment of the taxes due on them, but they argue that those provisions have no bearing upon the swamp or other lands embraced within the terms of the statute. This is, at least, an admission that *quoad* (what, for convenience, we will call) the 'tax lands,' the grant contained in the statute is not a grant *in praesenti*. The question, then, is, does it purport to vest title *in praesenti* to any other lands?

"The section of the law which we are interpreting begins with a long sentence, granting to the board 'all lands, now belonging, or that may hereafter belong, to the State' (and embraced within the district); then using language which is said to confine the grant to swamp and tax lands (as contradistinguished from what are called 'sovereignty' lands); then qualifying the grant by saying that tax lands shall be conveyed to the board only after the period of redemption shall have expired, and providing that the former owners may redeem within six

months, and that the money so realized shall be paid into the State treasury and placed to the credit of the levee board—and there the sentence ends. The plain, indisputable meaning, so far, therefore, is that the grant of the tax lands, at all events, is not a grant *in praesenti*. No language could convey that idea more clearly, and the language used is rounded with a period. Then we have a new sentence which has no more necessary or grammatical connection with tax lands than with swamp lands, and which by its terms deals with both (and with any other lands which might be considered included in the grant). It reads:

“‘After the expiration of the said six months (referring to the six months within which the former owners of tax lands are allowed to redeem) it shall be the duty of the Auditor and Register, on behalf, and in the name, of the State, to convey to the said board * * *, by proper instruments of conveyance, all lands hereby granted, or intended to be granted and conveyed * * * (whenever those officers shall be so requested), and thereafter, the said president * * * shall cause the said conveyances to be promptly recorded * * * and, when said conveyances are so recorded, the title to the said lands, with the possession thereof, shall, thenceforth, vest, absolutely, in the said board,’ etc.

“Now, it appears to us that, if the intention had been to distinguish between tax and swamp lands, in the matter of the requirement with respect to the execution of instruments of conveyance and their registry, the lawmakers would have so ex-

pressed it. But why, if they intended the grant of the swamp lands to become effective at once, do they make it the duty of the Auditor and Register, only 'after the expiration of six months, to convey * * * all lands hereby granted, or intended to be granted, or conveyed,' and why do they say, with regard to all such lands, '**when such conveyances are so recorded**, the title to the said lands, with the possession thereof, shall **thenceforth**, vest, absolutely, in the said board?' We are bound to assume that the makers of the law knew the difference between 'all lands, granted, or intended to be granted,' by them, and any given class or parts of such lands, and we cannot assume that, intending the grant with respect to some of the lands to take effect *in praesenti*, they would practically have prohibited the Auditor and Register from executing conveyances to any of the lands until after the expiration of six months, and would have said that 'thenceforth' (that is to say, after the execution and registry of such conveyances) 'the title to the said lands, with the possession thereof,' shall 'vest' in the grantee. If it had been the intention that the title to all, or to any part, of the lands should be vested in the board merely by virtue of the statute, one would suppose that it would have been made the duty of the Auditor and Register to execute conveyances as soon as the statute was adopted, at least, for so much of the land as was intended to be granted in that way; but the statute, by imposing upon those officers the duty of executing such conveyances 'after six months,' impliedly prohibited them from doing so within that time. Upon the whole, we are of opinion that the law in question

is susceptible of but one interpretation, *i. e.*, that its makers intended that disposable title to all lands granted or intended to be granted by it should vest in the grantee only upon registry, in the parishes where the lands lie, of proper instruments of conveyance executed by the Auditor and Register of the State Land Office. So far as the tax lands are concerned, the reason for thus qualifying the grant is obvious enough. The State held large bodies of land forfeited or bought in for taxes, some of which was subject to redemption and some not, and endless confusion might have arisen if the levee board had been placed in a position to sell such lands indiscriminately.

"As to the swamp lands, it may well be that in many instances there were pending unsettled claims and controversies of which the land office was advised, with which the Register alone was qualified to deal, and which rendered it inadvisable that new titles should issue save to the knowledge of that officer. But whether these views as to the reasons which inspired the law be correct or not, the law itself is plain, and it has (in effect) twice received from this Court the interpretation which we are now placing on it; once in a case involving lands formerly constituting the bed of a shallow lake, and again in a case involving lands acquired by the State under its tax laws. *McDade v. Levee Board*, 109 La. 625, 33 South. 628; *St. Paul v. Louisiana Cypress Lbr. Co.*, 116 La. 585, 40 South. 906. In the case of *Williams v. White Castle Lbr. Co.*, 114 La. 450, 38 South. 414, the question here presented was not directly at issue, but was referred

to without disapproval of the views previously expressed in the McDade case."

The Court thus directly held that no distinction was to be taken as to the six months limitation as between tax lands and swamp lands. We respectfully submit that the logic of the decision is unescapable. As the Court said at p. 216 of 123 La.:

"We are bound to assume that the makers of the law knew the difference between 'all lands granted or intended to be granted' by them, and any given class or parts of such lands, and we cannot assume that, intending the grant with respect to some of the lands to take effect *in praesenti*, they would practically have prohibited the Auditor and Register from executing conveyances to any of the lands until after the expiration of six months, and would have said that 'thenceforth' (that is to say, after the execution and registry of such conveyances) 'the title to the said lands, with the possession thereof,' shall 'vest' in the grantee."

As the Court further said at p. 217:

"The statute, by imposing upon those officers (the Auditor and Register), the duty of executing such conveyances 'after six months' impliedly prohibited them from doing so within that time."

The decision thus pronounced followed the earlier decisions of the Court in *McDade v. Levee Board*, 109 Louis-

iana 625, and *St. Paul v. Louisiana Cypress Lumber Co.*, 116 Louisiana 585. It has never been overruled, but, on the contrary, has been cited with approval in all of the later relevant decisions of the Court. See *State v. Grace*, 145 Louisiana, 962, and the opinion of the Court in the present case, 146 Louisiana, 1047.

Notwithstanding the strictures of the plaintiffs in error, there is nothing in any of the intervening decisions of the Supreme Court of Louisiana to indicate any departure from the doctrine of the *Cross Lake* case, or to support the proposition, that the acts creating the levee districts amounted to complete grants *in praesenti* to the levee boards of lands within those districts beyond the power of the Legislature to control, so long as no deed or conveyance had been made by the State to the levee board and recorded.

In *State v. Capdevielle*, 142 Louisiana, 111, it was merely held that Act 215 of 1908 did not amount to a provision by the Legislature that the lands within the levee district should be sold by public sale. The basis of the decision was not that the Legislature was without authority to provide for other disposition of the lands within levee districts, but that the Legislature had shown no intention to so provide. In that case no grantee from the levee board was involved, but the board itself was asserting claims under the act creating it. The Court expressly recognized that the Legislature had authority to revoke the grant to the levee board, pointing out that the Legislature might do so

quoad the levee board, even had deeds been actually executed, saying at p. 113:

“Levee boards are mere state agencies, and as between them and the State, the State is at liberty to cancel donations of land made to them, whether acts of conveyance have been executed or not. But the donation to relator (the levee board) has not been cancelled. * * *”

The last sentence quoted shows the *ratio decidendi*; and the Court referred to the act creating the levee board as unrepealed. This decision is certainly no authority for the proposition that the acts creating levee districts operated as complete grants *in praesenti*, which could not be revoked. It is rather pregnant with the converse proposition.

In *Atchafalaya Land Co. v. Grace*, 143 Louisiana, 637, the Supreme Court of Louisiana merely followed the decision in *State v. Capdevielle*, 142 Louisiana, 111, holding that the inchoate grant to the Levee Board had not, in fact been repealed by Act 215 of 1908, and **therefore** that a grantee of specific lands from the Levee Board might assert his claim to a deed from the State in the absence of any provision for other disposition of the land. Nothing in the decision supports the proposition that the Levee Board had acquired a complete title *in praesenti*, which could not have been revoked.

In *State v. Grace*, 145 Louisiana, 962, there had also been no other provision by the Legislature for the dispo-

sition of the lands in question other than the original provision in the act organizing the Levee Board. The opinion expressly cites and recognizes the *Cross Lake* case, the ground for its decision being stated by the Court (p. 966).

"Any land in the district appearing vacant on the records of the land office was subject at all times to be claimed by the Board of Commissioners so long as the grant was not repealed by legislative act."

We have thus noticed all of the Louisiana cases claimed by plaintiffs in error to be inconsistent with the decisions in the present case and the *Cross Lake* case. In none of them was there any occasion for the Supreme Court of Louisiana to question the doctrine which it had announced in the *Cross Lake* case, or to question the right of the State by clear provision to change the disposition of lands within the levee district, so long as no actual deed from the State to the board had been made and recorded. In the present case the doctrine of the *Cross Lake* case was reaffirmed, the Court saying (Record p. 105):

"Although the plaintiff in this suit has with regard to the land in contest whatever right the Board of Commissioners would have, if the board had not made the contract with Wisner & Dresser, the plaintiff has no greater right than the Board of Commissioners would have if it had not disposed of its claim. It was said in *State v. Cross Lake S. & S. Club, supra*, and repeated in *State ex rel. Board of Commissioners v. Grace, supra*, that the Board of Commissioners of the levee district could not con-

vey perfect title or title indefeasible at the instance of the State for any land in the district before the board had obtained and recorded an instrument of conveyance of the land in the manner required by the statute creating the levee district.

* * *

"The stipulation in the statute creating the levee district, that title to the lands should not vest absolutely in the Board of Commissioners until the board should obtain an instrument of conveyance and have it recorded in the parish where the land conveyed was situated, **made it impossible for any individual or private corporation to obtain from the board an indefeasible title to any land before the issuance and registry of such instrument of conveyance to the Board of Commissioners.** In fact, the Levee Board's contract with Wisner and Dresser did not purport to convey title to any land for which the board had not obtained an instrument of conveyance from the State Auditor or the Register of the Land Office. The obligation incurred by the Levee Board was merely to transfer to Wisner and Dresser all of the lands for which the board could obtain instruments of conveyance by virtue of the statute creating the levee district. And, **until such instruments of conveyance were obtained by the board, the lands remained under legislative control by the State, as well after as before the Board of Commissioners contracted with Wisner and Dresser. The Legislature, therefore, had the power, at any time, to limit the time within which the Board of Commissioners of the levee district could lay claim to lands that had been disposed**

of by the State directly in favor of individuals or private corporations."

In *Cross Lake Shooting & Fishing Club v. State of Louisiana*, 224 U. S., 632, this Court found it unnecessary to pass upon the correctness of the construction given by the Supreme Court of Louisiana to the provisions of the Levee Board act. In other cases, however, this Court has recognized the weight to be given to the decision of the Supreme Court of the State upon such a question. See *Wilson v. Standefer*, 184 U. S. 399, where the Court said, at p. 412:

"But as the general rule is that the interpretation put on a State constitution or laws by the Supreme Court of such State is binding upon this Court, and as our right to review and revise decisions of the State Courts in cases where the question is of an impairment by legislation of contract rights, is an exception, perhaps the sole exception, to the rule, it will be the duty of this Court, even in such a case, to **follow the decision** of the State Court when the question is one of doubt and uncertainty. Especial respect should be had to such decisions when the dispute arises out of general laws of a State, regulating its exercise of the taxing power, or **relating to the State's disposition of its public lands**. In such cases it is frequently necessary to recur to the history and situation of the country in order to ascertain the reason as well as the meaning of the laws, and knowledge of such particulars will most likely be found in the tribunals whose special function is to expound and interpret the State enactments. * * *

So in this case the Supreme Court of Louisiana was peculiarly qualified to suggest and weigh the considerations which perhaps influenced the State legislature to provide that no conveyances should be made to levee boards for six months, and that no title should vest in the boards until the execution and recordation of conveyances finally made.

In the case last cited this Court further said (at page 415):

"Upon the whole, we agree with the conclusion of the Supreme Court of Texas, that no contract rights of a purchaser under the Act of 1879 were impaired by the provisions of the subsequent Act of 1897; that the twelfth section of Act of 1879, was not, in legal contemplation, a stipulation by the State that the only remedy which might be resorted to by the State was the one therein provided for; that, in the language of Chief Justice Marshall, 'the distinction between the obligation of a contract and a remedy given by the Legislature to enforce that obligation exists in the nature of things, and without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation may direct.'" *Sturges v. Crowninshield*, 4 Wheat. 122.

See also *Waggoner v. Flack*, 188 U. S., 595, where this Court said, at p. 600:

"Although this case involves the question of an impairment of an alleged contract by subsequent legislation, and we are therefore not bound by the

construction which the State Court places upon the statutes of the State which are involved in such an inquiry, yet, as the true construction of the particular statute is not free from doubt, considering the former legislation of the State upon the same subject, we feel that we shall best perform our duty in such case by following the decision of the State Court upon the precise question, although doubts as to its correctness may have been uttered by the same Court in some subsequent case." *Wilson v. Standefer*, 184 U. S. 399, 412.

The case last cited is also direct authority for the main proposition in this case, *i. e.*, the efficacy of Act 62 of 1912 as a constitutional statute of limitations. See 188 U. S., at 605.

It will be noted that the *Cross Lake* case was a stronger case for the adverse claimant than the present case is for the plaintiff and intervenors. In the *Cross Lake* case the Cross Lake Shooting and Fishing Club had an actual deed from the Levee Board to the specific and particular lands involved, whereas in this case neither the Atchafalaya Land Company nor anyone else has a deed even from the Levee Board to the land involved.

Also it will be noted that in the *Cross Lake* case there was no other grantee from the State within the period of six months, within which the Court held that the Auditor and Register were prohibited from making deeds to the Levee Board. In the present case, all of the patents to

the defendant were issued within six months of the passage of Act No. 97 of 1890 (all but two of the patents being issued in September, 1890, or within two months of the passage of the act, and the remaining patents being issued in November, 1890, within four months of its passage). According to the decision of the Supreme Court of Louisiana, within the period of six months, certainly, the Levee Board had acquired no title, but, on the contrary, in the language of the Court, the Auditor and the Register were prohibited from making deed to the Levee Board. Unless that prohibition is entirely meaningless, it necessarily follows that within the period to which it applied, it was competent for the Register and the Governor to make such disposition of State lands as to them seemed proper, and as was in conformity with the general laws of the State. It follows that the patents to Williams, from which the defendant derives title, were valid *ab initio*.

Conceding to the decision of the Supreme Court of Louisiana the weight which, in *Wilson v. Standefer* and *Wagoner v. Flack*, this Court held was to be attributed to the decisions of the State Supreme Court construing its own statutes on the disposition of public lands, the patents to Williams, issued within six months of the passage of Act No. 97 of 1890, were valid *ab initio* and the defendant's title was at all times the elder title and superior to the title of the plaintiffs in error. So that no right under the constitution of the United States has been or could be denied to the plaintiffs in error by the decision in favor of the defendant.

Even apart from the rule of construction laid down in *Wilson v. Standifer* and *Waggoner v. Flack*, the construction placed upon the Levee Board acts by the Supreme Court of Louisiana in the *Cross Lake* case was, we submit, right and directly supported by the language of the Levee Board acts and the special provisions made therein for the execution and recordation of formal conveyances. A similar decision was rendered by the Supreme Court of Arkansas in considering an analogous statute, *Cotton Belt Lumber Co. v. Kelly*, 74th Arkansas, 400.

The position of the Supreme Court of Louisiana is also in effect supported by the decision of this Court in *Chapman & Dewey Lumber Co. v. St. Francis Levee District*, 242 U. S. 186, where the Court was considering the effect of the Swamp Land Act of September 28th, 1850, c. 84, 9 Stat. 919. In that case the Court said, at page 198:

"But it is said on behalf of the levee district that, even though the lands were not included in the patent, they passed to the State under the Swamp Land Act independently of any patent, and passed thence to the district under the State Act of 1893. The contention is not tenable. The lands were never listed as swamp lands and their listing does not appear to have been even requested, doubtless because they were not surveyed. Assuming that in fact they were swamp lands, the State's title under the Swamp Land Act was at most inchoate and never was perfected. * * *

This case was followed in *Lee, Wilson & Co. v. United States*, 245 U. S. 24, where the conclusion of the Court as summarized by the reporter is thus stated:

"The Swamp Land Act of September 23, 1850, C. 84, 9 Stat. 519, did not convey land of its own force without survey, selection or patent."

These decisions are stronger authority than required to support the position of the Supreme Court of Louisiana because the language of Louisiana Act 97 of 1890 negatives much more strongly and in much more detail the idea of a complete grant *in praesenti* than does the language of the Swamp Land Act of 1850. Nor is there any provision in the Federal Act similar to that of the Louisiana statute impliedly prohibiting conveyances thereunder for six months.

See also *Little v. Williams*, 231 U. S. 335; *Sawyer v. Osterhaus*, 212 Fed. 765; *U. S. v. Lee, Wilson & Co.*, 214 Fed. 630; 227 Fed. 827 (affirmed, 245 U. S. 24, *supra*), all to the effect that until a patent issues, the title of the State under the swamp land grants in Congress is inchoate, and the land, notwithstanding the rather sweeping language employed in the Act of Congress, remains subject to other disposition by the United States.

The Fifth Amendment prohibits the United States from taking property without due process as effectively as the Fourteenth Amendment prohibits States from doing so. If, therefore, under the Constitution of the United States,

the swamp land grants of Congress do not, in the absence of a deed out of the United States, prevent the United States from disposing otherwise of swamp lands as against claimants under the State, then certainly Louisiana Act 97 of 1890 does not prevent the State of Louisiana from otherwise disposing of lands within the Levee District so long as no deed out of the State exists.

Stating the proposition in other language: If the Swamp Land Act of 1850 does not establish any vested property or contract right in the State or grantees of the State, and if, therefore, the United States may, without violating the Fifth Amendment, subsequently make other disposition of swamp lands covered by the Act, then certainly Louisiana Act 97 of 1890 does not establish any vested property or contract right in the Levee Board or its grantees, and the State may otherwise dispose of the lands referred to in that Act without violating either Article 1, Section 10, or Amendment Fourteen.

As the State of Louisiana had the right to revoke the grant entirely so long as no formal conveyance had been made, it certainly had the right to quiet title thereto in favor of adverse claimants after a reasonable period. If the State might at any time have taken the lands at once away from the Levee Board (as it did in the *Cross Lake* case) it follows, *a fortiori*, that the State could at any time provide that the land should be lost to the Levee Board as against parties claiming under State patents, unless attacks upon such patents were made within a reasonable time. The

whole must include all of its parts, and the greater must include the less. Whoever can take away entirely and absolutely can certainly take away conditionally. Stating the case in its strongest form for the plaintiffs, this is the least that Act No. 62 of 1912 undertook to do. By that act the Legislature said to the Levee Board, in effect,

"We hereby revoke *inchoate* grants made to you by Act No. 97 of 1890, insofar as that grant might be effective against adverse claims under duly recorded State patents, unless you assert your claim against such patentees within six years from the passage of this act."

Plaintiff has not even an equitable ground on which to appeal to the Court for relief.

The pleadings and statement of facts show that at the time that Wisner and Dresser made their contract with the Levee Board in 1900, the lands in question had **ten years before** been sold and patented by the State to defendant's authors in title, and patents had been regularly issued and duly recorded both in the State Land Office and the parishes where the property was situated. This was notice to Wisner and Dresser that the Levee Board did not own these lands and that the State no longer owned them, and that the Levee Board could not "lay just claim" to them, and that Wisner and Dresser could not acquire them.

In this connection the Supreme Court of Louisiana said (Record p. 102. :

"It is not contended that the six years allowed, from and after the passage of the act, was not sufficient time for the board of commissioners of the levee district, or for any person, firm or corporation claiming rights acquired from the board, to institute a suit to annul any patent that had been issued for lands of which the board of commissioners might have demanded an instrument of conveyance from the State Auditor and the Register of the Land Office. On the contrary, as far as the record discloses, no attempt was made by the board of commissioners of the levee district, or by Wisner and Dresser, or either of them or by the South Louisiana Land Company, or the Atchafalaya Land Company, or by the Schwing Lumber & Shingle Company, to obtain an instrument of conveyance of the lands in contest, or to annul the patents that had been issued to Pharr and Williams, until the six years allowed by the statute of limitation had expired. There is an admission in the record that the Atchafalaya Land Company and the Schwing Lumber & Shingle Company employed abstractors of titles in the latter half of the year 1918 to examine the titles of all the lands within the Atchafalaya Basin Levee District, 'with a view of ascertaining what lands they might lay claim to, under the contract alleged in the petition, and that as a result of the investigation by the abstractors, the present suit was brought.' As this suit was brought on the 26th of April, 1919, it is apparent that the work of the title abstractors did not take many months. An exam-

ination of the records of the land office, at any time within the preceding **twenty-eight years**, would have disclosed that patents had been issued to Pharr and Williams for lands within the levee district, for which the Board of Commissioners might have demanded an instrument of conveyance, under the provisions of Section 11 of Act 97 of 1890."

As pointed out by the Supreme Court of Louisiana, the contract of Wisner and Dresser with the Levee Board merely covered lands to which the board could "lay just claim." It therefore did not even purport to cover lands which had never been deeded by the State to the Levee Board, but which, on the contrary, had been patented to other persons within six months from the passage of Act No. 97 of 1890.

CONCLUSION.

We earnestly submit that:

(1) Even if plaintiffs showed originally a valid title by complete grant *in praesenti* out of the State of Louisiana, their present attack upon the title of defendant, is barred by the limitation established by Act No. 62 of the Louisiana Acts of 1912. That Act does not impair the obligation of any contract, nor does it divest any vested right, or take any property without due process of law. Any contrary holding would nullify an unbroken chain of decisions in this Court, and make it impossible to establish a statute of limitations for application to causes of action or rights then existing.

(2) The Supreme Court of Louisiana has rightly construed Act No. 97 of the Louisiana Acts of 1890 as not establishing a grant *in praesenti*, and as not giving any complete contract or property right to the levee board, or any grantee of the board, until formal conveyance has been made by the State and recorded. The Supreme Court of Louisiana, moreover, has properly construed that statute as not applying for a period of six months after its passage, within which time the lands were properly patented to defendant's authors, under the general land laws of the State. As to the lands so patented, *a fortiori*, there was never any contract right in the levee board, or its transferees to be impaired, and never any property right to be divested.

We respectfully submit therefore that the judgment below should be affirmed.

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MONTE M. LEMANN,
Attorneys for Defendant in Error.

APPENDIX.

Act 97 of Louisiana Acts of 1890 is entitled:

"An Act to repeal that portion of Act 33 of 1879 creating the Fourth Levee District and to create a new district to be known under the style of 'The Atchafalaya Levee Basin District,' and to define the limits thereof * * *"
(The title of the Act covers a printed page.)

Sections 1 to 10 of the Act provide for the establishment of a Board of Commissioners, define the territorial limits of the Levee District, fix the powers and authority of the Board and provide for local or special assessments.

Section 11 of the Act reads as follows:

"Section 11. Be it further enacted, etc., That in order to provide additional means to carry out the purposes of this Act, and to furnish resources to enable said board to assist in developing, establishing, and completing a levee system in said district, all lands now belonging, or that may hereafter belong to the State of Louisiana, and embraced within the limits of the levee district as herein constituted, shall be, and the same hereby are given, granted, bargained, donated, conveyed and delivered unto said Board of Levee Commissioners of the Atchafalaya Basin Levee District whether said lands or parts of lands originally granted by the Congress of the United States to this State or whether said lands have been, or may hereafter be, forfeited to, or bought in by or for, or sold to the State, at tax sales for non-payment of taxes, where the State has or may hereafter become the owner of lands, by

or through tax sales, conveyances thereof, shall only be made to said Board of Levee Commissioners after the period of redemption shall have expired; provided, however, that any and all former owners of lands which have been forfeited to purchasers by or sold to the State for non-payment of taxes, may at any time within the six months next ensuing after the date of the passage of this Act redeem said lands, or any of them upon paying to the Treasurer of the State all taxes, interests, costs and penalties due thereon down to the date of such redemption, but such redemptions shall be deemed and be taken to be sales of lands by the State, and all and every sum or sums of money so received shall be placed to the credit of the Atchafalaya Basin Levee District. After the expiration of said six months it shall be the duty of the Auditor and Register of the State Land Office on behalf of and in the name of the State, to convey to the said Board of Levee Commissioners, by proper instruments of conveyance, the lands hereby granted or intended to be granted and conveyed to said Board, whenever from time to time said Auditor and said Register of the State Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners, or by the president thereof, and thereafter said president of said Board shall cause said conveyances to be properly recorded in the recorder's office of the respective parishes wherein said lands are or may be located, and when said conveyances are so recorded the title to said land, **with** the possession thereof, shall, from thenceforth vest absolutely in said Board of Levee Commissioners, its successors or grantees; said lands shall be exempted from taxation after

being conveyed to and while they remain in the possession or under the control of said Board. Said Board of Levee Commissioners shall have the power and authority to sell, mortgage, pledge or otherwise dispose of said lands in such manner and at such times and for such prices as to the said board shall seem proper, but all proceeds derived therefrom shall be deposited in the State Treasury to the credit of the Atchafalaya Basin Levee District, and shall be drawn out only upon the warrants of the president of said board, properly attested as provided in this Act. Provided, that the tax provided shall not be levied on produce raised on lands not alluvial."



DEC 13 1921
WM. R. STANSBURY
CLERK

NO. 106.

Supreme Court of the United States

OCTOBER TERM, 1921.

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Plaintiffs in Error.

Versus

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Defendant in Error.

BRIEF IN REPLY TO DEFENDANT'S BRIEF.

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Attorneys for Plaintiffs in Error.

Before undertaking to make reply to the propositions of the defendant in error, we venture to call attention to the fact, that in the instant case, Mr. Justice O'Neil announced two conflicting principles. The first, we submit is correct: "It is said that the grant to relator did not vest until supplemented by Acts of Conveyances, to be executed by the Auditor and Register. It has, however, several times been held by this Court, that such grants at least operate to withdraw the lands affected by them from the market."

The second, we submit is erroneous. It is: "The stipulation in the Statute creating the Levee District that title to the lands should not vest absolutely in the Board of Commissioners until the Board should obtain an instrument of conveyance, and have it recorded in the Parish where the land conveyed was situated, made it impossible for any individual or private corporation to obtain from the Board an indefeasible title to any land before the issuance and registry of such an instrument of conveyance to the Board of Commissioners. In fact, the Levee Board contract with Wisner and Dresser did not purport to convey title to any land for which the Board had not obtained an instrument of conveyance from the State Auditor or Register of the Land Office. The obligation incurred by the Levee Board was merely to transfer to Wisner and Dresser all of the lands for which the Board could obtain instruments of conveyance by virtue of the Statute creating the Levee District.

And, until such instruments of conveyance were obtained by the Board, the lands remained under legislative control by the State, as well after as before the Board of Commissioners contracted with Wisner & Dresser." (The fallacy of that reasoning has already been discussed.)

The fact that the Atchafalaya Land Co. as assignee of Wisner and Dresser were entitled to all the rights trans-

ferred by the State to the Levee Board and could protect these rights without formal deed was decreed in the case of *Atchafalaya Land Co. vs. Grace*, 143 La. R. 637.

The Court said: "The contention on behalf of defendants is that pursuant to the donation declared by Act of 1890, though the Board of Commissioners might demand a title to the tract in question, and though for valuable consideration, the Board, by two Acts, respectively, promised to convey, and did convey the tract in question to plaintiff's author, that plaintiff cannot exercise that right because by Act No. 215 of 1908, the General Assembly declared all applicants for entry or purchase of public lands of the State, then on file, to be null, and prescribed a particular method whereby they should thereafter be sold. This Court has several times, had occasion to consider the effects of the grants contained in Act No. 97 of 1890 and similar Statutes, and of Act No. 215 of 1908, when construed therewith, and has held the Statute last mentioned to be inapplicable to lands granted under those first mentioned, or under contracts with the grantee, that in effect, the State had parted with the lands donated to the Levee Board; that they were not thereafter open to entry as public lands of the State; that having been submitted to the disposition of the Levee Boards, and contracts made with reference to them, could not be affected by subsequent legislation."

That interpretation of the presently considered contract cannot stand with the decision in the instant case that the State may affect the grant as long as deed has not been executed.

In the case of *State Ex Rel Com. of Caddo Levee District vs. Grace & Douglas*, 146 La. R. 962 decided immediately before the present case, Mr. Justice O'Neil maintained a deed from the Levee Board, under the Legislative

grant and without deed from the Register or Auditor and set aside a State patent upon the principle that after the grant, the Register could not issue a patent.

What is now desired to direct to the attention of this Honorable Court is, that after the decision in the instant case, Mr. Justice O'Neil, has rendered another opinion returning to the established Jurisprudence.

It is the case of Albritton vs. Shaw, reported in 148 La. R. 427. In that case, the question arose as to the right of a possessor to a tract of land which he sought to enter in the United States Land Office after the swamp land grant, (whose claim was rejected nearly forty years later, when the land was declared to have been included in the swamp land grant) to sue to annul a patent issued by the State land office in violation of statutory provisions bearing on the sale of lands. He here recognizes the right of one holding equitable title to the land at the time of the issuance of the patent to contest it; and he supports his conclusions by the case *State Ex Rel Board of Commissioners vs. Grace*, 145 La. R. 962. He reviews the jurisprudence of this Honorable Court, which he declares coincides with that of the State Court.

We quote on page 432.

"But a person who had an equitable title at the time when the Register of the Land Office issued a patent to some one else for the land—a person who might be adjudged the owner of the land if the officers of the Land Department were without authority to issue a patent for it—to any one else—surely has an interest in attacking, and therefore a right to attack the validity of the patent, on the ground that the officers of the Land Department had no legal authority to issue it. See *State Ex Rel Board of Commissioners vs. Grace*, Register of the State Land Office, 145 La. 962, South 206, in which all previous rulings

upon this subject are reviewed and reconciled."

This is in accord with the first principle to which we referred the Court, but a rejection of the second proposition which we have discussed above.

Our purpose is to direct the attention of this Court to the fact that upon first opportunity, the State Supreme Court, through Mr. Justice O'Neil, returned to the fixed Jurisprudence, that from the date of the attaching of an equitable title in favor of one, the Register of the Land Office could not give patent to another.

The right of the equitable holder of title to perfect title or to secure muniments of title is a right as is any other, secured from divestiture in violation of a contract or without due process.

DISCUSSION OF DEFENDANTS PROPOSITIONS.

We will discuss defendants propositions briefly and in the order in which they arise:

The counsel for defendant in presenting the act of the Legislature, making the grant to the Levee Board, while making reference to the entire article in an appendix, refers to only that portion of the section which has reference to the manner in which the deed or instrument of conveyance is to be executed and recorded. That is an incident of the grant, but not the grant itself. This is contained in the language which provides that "All lands now belonging or that may hereafter belong to the State of Louisiana, and embraced within the limits of the Levee District, as herein constituted, shall be, and the same hereby are given, granted bargained, donated, vested and delivered unto the said Board of Levee Commissioners of the Atchafalaya Basin Levee District," etc.

No language could be stronger in making a grant in praesenti; and when the Levee Board sold all of the rights

which they had, or might have to the lands transferred to them by this grant, their vendees, Wisner & Dresser, who acquired title twelve years before the Act of 1912 was enacted, certainly acquired equitable title of the nature described in the last decision by Justice O'Neil to which we have just directed the attention of the Court. There could be no specific description of the land in that grant any more than there could have been specific description of the swamp lands given to the various States.

As we have already discussed, each grant made a provision by which the particular lands embraced within each grant might finally be covered by a muniment of title, but reverting back always for its basis to the Legislative grant.

The contention of the defendant, that the Act 97 of 1890 did not amount to a grant in praesenti, is so adverse not only to the jurisprudence to which this Court has been referred, but to the interpretation of this very contract in the cases of Board of Commissioners of the Atchafalaya Basin Levee Board vs. Capdevielle, 142 La. Rep. 111 and the Atchafalaya Land Co. vs. Grace, reported in 143 La. Report 638, that it is difficult to appreciate the basis upon which this contention rests. The Cross Lake case reported in 123 La. R. at page 208 has been discussed in the original brief to such extent as to require no further discussion here, but by the reference which counsel makes to the decision in that case rendered by this Honorable Court in the 224 U. S. 632, he directs the attention to the fact that the counsel who secured the writ of error in that case predicated his attack upon the fact that the decision was at variance with the jurisprudence of the State.

This Court did not entertain Jurisdiction of the matter, for the reason that the judicial interpretation by the State Court was not considered in contravention to the Federal constitution. The issue is entirely different when

contravention arises from the act of legislature, which not only divests vested rights without due process, but impairs the obligation of this particular contract as interpreted by the State Supreme Court.

Subsequent to the Cross Lake case, the State Supreme Court returned to the Jurisprudence which existed before, and there has been no break excepting in the decision of Justice O'Neil in the instant case, which itself is evidently discarded in his later case, to which reference has been made hereinabove.

The sole contention presented to this Court is that arising out of the application of Act 62 of 1912, fixing a prescriptive period of six years against the State for the annulment of patents. It is not proposed to reiterate the argument already furnished this Court upon that issue, but we purpose to submit to the Court considerations showing that the authorities advanced by the defendant have not reached the proposition of plaintiffs.

The contention of the plaintiffs is that the grant from the State to the Levee Board, and the interpretation of the grant by the two decisions heretofore referred to, make it a part of the contract, that the Levee Board, (or its assignees), should have an indefinite period in which to require title deed to be executed under the equitable title which it held to the land, and any Statute which provides that the Levee Board or its assignees should have less time than that allowed in the grant and transferred in the sale to Wisner & Dresser, impairs the obligation of the contract.

Before taking up the discussion of the authorities referred to by the defendant's counsel, we call attention to an error of fact on page 9 of their brief. The statement would probably unintentionally lead the Court to believe that there was only a promise of sale by the Levee Board to Wisner & Dresser. The fact is that when the balance of

the purchase price was paid, another deed was executed completing the sale. T. pp. 19 and 21.

Now let us consider defendants authorities.

The first decision referred to by defendants counsel is U. S. vs. Chandler Dunbar Water Power Company, 209 U. S. 417. This does not apply. The United States had title to the land when it issued the patent. By Congressional Act, it was provided that a patent could not be attacked after five years. The Court said that it was the United States speaking through this last Act, and whether the President had the right to issue the patent or not, the right to question his authority was terminated by the Statute. But the Court notes that the land belonged to the United States and its interests alone concerned. Not so, would have been the finding, if the United States had made patent to—let us say—lands granted to the States by the swamp land grants and just as the State of Louisiana donated them to the Levee Board.

The case of Jackson vs. Langshire, 3 Peters, 280 is one concerning the right of States to enact Statutes, giving preference to a younger title when recorded before an older one. That is simply the law of registry, and no one doubts its correctness. But the grant to the Levee Board did not require the title to be recorded in the Parish in which the lands were located, until deed was made to the States grantee. The usual laws of recordation were suspended by the legislative contract quoted from the Act 97 of 1890. The title remained in the State as trustee for the grantee until deed was made and recorded, and all persons were held to know this. Hence the recordation of the patent by Williams did not alter the special law which held all parties to look to the Land Office for title until the State executed the deed to the grantee.

The case of Terry vs. Anderson, 95 U. S. 628 announces

the proposition for which we contend, and which has again escaped defendant's counsel. "A liability by Statute is as much subject of remedial legislation as a liability by contract, unless a remedy enters into and forms part of the obligations the Statute creates."

Here is our proposition again. The continuing right to demand title was written in the contract. *Atchafalaya Basin Levee District vs. Capdevielle, Auditor*, 142 La. R. 111.

The case of *Vance vs. Vance*, 108 U. S. 514 is not one in which there is a clause in a contract affected by the Act attacked as unconstitutional. It was a case affecting the recordation of *tacit* mortgages arising under the Louisiana Constitution. It did not change any obligation. It provided that the mortgage should be recorded within a certain time in order to protect innocent parties dealing with the obligor. In this case the Court refers to the *Terry-Anderson* case, and notes the limitation put to the rule in the language following:

"The case of *Terry vs. Anderson*, 95 U. S. 628, presents in the terse language of the Chief Justice of this Court, both the rule, the reason for it, and the limitation which the Constitutional provision implies." This applies to the reservation made in that decision: "Unless the remedy enters into and forms part of the obligation the Statute creates."

The case of *Wheeler Vs. Jackson*, 137 U. S. 245 does not involve the principle at issue here.

That was a case in which the City of New York sold property for the collection of taxes. The law under which it was sold provided: "That the Collector should sell property for unpaid taxes and assessments for the lowest terms of years for which any person would receive it, and that the purchaser should receive a certificate of sale, which when

recorded, in the Collector's Office, should constitute a lien on the premises sold. The owner might redeem within two years by paying the purchase price, any other tax paid by the purchaser, and fifteen per cent. in addition. In case the land was not redeemed within the specified time, the Collector should execute to the purchaser a proper conveyance of the land sold, and thereupon the purchaser might obtain possession by some proceedings. In 1885 an act was passed providing that no special proceedings should be maintained to compel the execution of any lease upon any sale for taxes made for more than eight years prior to its passage, unless brought within six months thereafter, and that after the lapse of six months all sales made more than eight months prior to the passage of the act should be cancelled, and that the liens of the certificate of sale should cease. Prior to the enactment of this statute, there was no longer limitation for suits to enforce the execution of conveyances from the Collector." The Court held that this act was not unconstitutional as impairing the obligation of contracts, because it prescribed a shorter time within which actions might be brought, it being competent for the Legislature to impose such shorter limitation, provided it be reasonable. We have taken the above statement from the syllabus of the case.

It is manifest that there was no contract between the State and the tax purchaser under and by virtue of which the tax purchaser had an indefinite time in which to file the suit under which his lien would be authenticated. The Court takes notice of the fact that it had become customary among those purchasing at tax sales not to resort to the Court for the purpose of securing title, but to leave their liens open because of the fifteen per cent. which was held out as a prospect in the event the tax debtor should come forward to redeem his property. There was a question of

policy involved in this matter, and not one of contract. We quote from the body of the decision:

"We cannot say that the limitation prescribed by the Act of 1885 is unreasonable when applied to those who neglected for eight years prior to its passage, to demand the conveyances or leases to which they were entitled. On the contrary, considerations of public policy require that the records of the sale of real property in Brooklyn for taxes, assessments, and water rights, should no longer remain in the condition to which they had been brought in 1885, by reason of purchasers having forborne, for an unreasonably long period, to obtain leases that they might realize interest upon their investment in tax titles at the rate of fifteen per cent. per annum. By taking a lease when entitled to it, the purchaser put the taxpayer in a position where the latter would be compelled, if he desired to sell or mortgage the property to another, to pay not only the amount advanced by the former, but interest, at the above rate, for the whole time subsequent to the sale. The Legislature did not intend, by the acts of 1854 and 1873, to establish any such relations between the taxpayers and the purchaser, or to put the former at the mercy of the latter for an indefinite period; for both acts contemplated the execution by the Collector of a lease immediately upon the expiration of the time for redemption, giving the purchaser, in that way, precisely what he bought." (*Italics ours.*)

It is manifest then, that in interpreting that Statute the Court negatives the proposition that there was any contract between the tax purchaser and the tax debtor or the State, under and by virtue of which the tax purchaser could have delayed the taking of title, and consequently he could not complain if the Statute was enacted requiring him to do so within a specified time.

We quote further: "It is further contended, even if the statute is sufficient to bar an action to compel the execution of a conveyance to the purchaser, unless brought within the time prescribed, it is unconstitutional in that it requires the Registrar, after the expiration of six months from its passage, without any such action being commenced, and notice thereof given within that period—to cancel in his office all sales made more than eight years prior to June 6th, 1885, and provides that 'thereupon the lien of all such certificates of sale shall cease and determine.' That provision, it is said, destroys the security upon which the purchaser relied when he advanced his money, viz., the lien of the record after sale. This position is untenable. The substantial rights acquired by the purchaser was a return of his money with interest, or, after a certain time, a lease of the premises for the term named in the certificate of sale. The lien created by the certificate of sale protected him during the period within which the owner of the property was permitted to redeem; and if the latter redeemed, he could only do so, of strict right, within a given time, and then only by reimbursing the purchaser all he had paid, with the addition of fifteen per cent. per annum. If there was no redemption, the purchaser was entitled to a lease that would give him all for which he bargained. The lien consequently, would cease upon the execution and delivery to the purchaser of a lease. If the lien was of such a character that the purchaser, not having received a conveyance, could enforce it by suit or special proceedings for that specific purpose, the power of the Legislature to prescribe a period within which such a suit or proceedings be commenced, or the lien be lost, is as clear as its power to fix a time within which the purchaser must sue to compel the execution of a conveyance or lease."

It is manifest that this situation is entirely different

from that under consideration. The New York case called for the judicial declaration that the act contemplated the tax purchaser should take title on the expiration of two years while the Supreme Court says, of the Louisiana Statute being discussed, that it contemplated the grantee should have unlimited time to take title. The Louisiana Statute further provided exemption from taxation until the option was exercised and surely the right to be freed from that taxation is as much a part of the contract as anything else, and to say that the time for the enforcement of that right can be abridged by a subsequent act is manifestly unsound.

Reference by the defendant's counsel to *Phalen vs. Virginia*, 8 Howard 163 is not fortunate to them. The tenor of the entire decision is, that there was no contract in the franchise by the State to Commissioners who were appointed to build a short road and for revenue, authorized to resort to lotteries. The Court says that the grant was in its nature to be exercised in a short time, and an Act fixing a limit long after the Commissioners should have acted, to the time in which they might act, did not divest them of a right. The principle is involved that the State could not bind itself irrevocably to the grant of a franchise to perpetuate or support a nuisance. But even under these conditions, the Court notes that the Legislature sought to safeguard contractual rights, if any existed. We read the decision as giving recognition to the limitation to any statutory provision which alters the time, which by a contract, is prescribed for the performance of its obligation. The very opposite presumption arise as to the necessity of a long or indefinite period to seek title by the grantee from the State. The same condition exists to sustain this contention as that under which the United States is making

title deed to swamp land grants, under the Acts of 1849 and 1850.

The case of *Koshkonong vs. Burton*, 104 U. S. 668 do not apply. It has been repeatedly recognized by the plaintiffs that a Statute of limitation may shorten the prescriptive period provided sufficient time be allowed to exercise the contract rights.

The difference is manifest. The holders of the coupons held evidences of indebtedness which had matured. They were due. Under the law, as it was at the date of maturity, the holder had twenty years to sue. A later law made the time shorter. That is within the rule and is binding, but the time limit was fixed in the contract and it had lapsed, by contractual limitation.

The Statute under consideration in that case did not change that. It did not make the six month coupons mature in four months. The case is quite different, when by pretence of remedial legislation, the obligation of the State to make title at any time at the option of the grantee is limited to six years by a provision of law.

There was a reason for leaving the perfection of transfer, open indefinitely arising out of the very nature of the subject of the grant. The State Supreme Court in interpreting this very contract, in *Atchafalaya, etc., vs. Capdevielle*, 112 La. R. 111, said that "Act No. 97 of 1890 contemplates that the donation of lands to the Atchafalaya Basin Levee Board therein contained, should stand open indefinitely for acceptance, and that the lands should be conveyed to the Board, from time to time, as requested by it, and that the act is unaffected by Act No. 215 of 1908; hence the request which the Board now makes of the State Auditor and Register of the State Land Office to execute conveyances of the land so donated is as well within the law as it ever has been, and as the ministerial duty rests upon

those officers to comply with that request, mandamus will lie to compel such compliance."

It is unnecessary to discuss the quotation of defendants counsel from *Leffingwell vs. Warren*, 67 U. S. 599. The constitutionality of a Statute of repose barring an attack upon a tax title is as well fixed in our Jurisprudence, Federal as well as State, as is the principle that by guise of remedial legislation the term granted in a contract for its execution cannot be abridged by legislative act.

The case of *Turner vs. State of New York*, 168 U. S. 92 as referred to by counsel for the defendant, may be considered as discussed in the comments on *Wheeler vs. Jackson*. We cannot abstain from the comment, that what seems to have escaped counsel is the fact that the contract under consideration not only in its terms, but by Judicial interpretation quoted above, has written in it as an essential, that the time limit for the right to demand compliance is indefinitely in the option of the grantee.

If the Register, in defiance of this, issued a patent to other parties, and the Statute attacked bars the right of the grantee to remove this adverse title, then by guise of remedial law, the contract is destroyed. This error of counsel is accentuated when he quotes the case of *Oshkosh, etc. vs. Oshkosh*, 187 U. S. 437. After stating the principle, to which we agree, that parties have no vested rights in particular remedies or modes of procedures, he quotes the very principle for which we contend, as follows: "It is true the legislature may not withdraw all remedies, and thus, in effect, destroy the contract; nor may it impose such new restrictions or conditions as would materially delay or embarrass the enforcement of rights under the contract according to the usual course of Justice as established when the contract was made. Neither could be done without impairing the obligation of the contract."

Davis vs. Mills, 194 U. S. 451 deals with the conflict of laws in application of the Statute of limitation of one State in a cause in another. We confess our inability to find any principle involved in this case, discussed in that. It deals with remedies, and the rights of parties thereunder, but it no where holds that a remedy may impair a contract.

The case Soper vs. Laurence Bros., 201 U. S. 359, upon the statement of counsel, simply presents the case of a Statute confirming title to one holding wild lands during the prescribed time. No one questions the validity of such remedial laws. The prescriptive term might be lengthened or shortened. The question of a time limit for making title arising out of a contract was not at issue. The same comment applies to Montoya vs. Gonzales, 232 U. S. 375; Grant Lumber Co. vs. Gray, 236 U. S. 133; Canadian Northern Ry Co. vs. Eggen, 252 U. S. 553, all as quoted by defendants counsel.

We do not wish to burden the Court with a discussion of counsels comments for defendant upon the State Jurisprudence. We have discussed that fully. Let us call attention to the fact that the strong reliance on the Cross Lake case shows the weakness of their position. The very decision of this Court in that case shows that it was attacked because it did violence to the preceding jurisprudence as fixed by the State Court. It was immediately repudiated by the State Court in following decisions; and if in the instant case the State Court adopted any of its dicta, it only showed a vacillation, from which that Court has already recovered, and which should not guide this Honorable Court.

The Counsel, in their third proposition, raise the issue, that the grant by the State to the Levee Board was not a grant in praesenti. They contend that the lands remained within the State's control during a period of six

months, and the Register had the right to make patents within that period. The Cross Lake case and McDade vs. Bossier Levee Board are given as authority for this proposition.

We again ask the Court to read the grant. It is a present giving, with the suspension of the making of deed to enable tax debtors to redeem.

The McDade case does not hold any such proposition. The Cross Lake case may. Eminent Counsel sought to have his Court reject that decision as adverse to the Jurisprudence up to that time, but this Court did not entertain Jurisdiction. We repeat, that until quoted by Mr. Justice O'Neil in the instant case, it was repudiated by the State Court, and in the last expression, again repudiated.

We respectfully request the Court to read, the references to the Jurisprudence of the State, absolutely adverse to the Cross Lake case, and as will be found in the brief of Counsel, Mr. Jacob H. Morrison, for the Board of Commissioners, and supplement that by further reference to the language of Mr. Justice O'Neil in the instant case, quoted at the beginning of this brief.

Respectfully submitted,

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Attorneys for Plaintiffs in Error.

**ATCHAFALAYA LAND COMPANY, LIMITED, ET
AL. v. F. B. WILLIAMS CYPRESS COMPANY,
LIMITED.**

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 106. Argued March 3, 1922.—Decided March 13, 1922.

A statute limiting the time within which actions may be brought to annul state patents for land and which, applied to a given case,

prevents a senior grantee or contractee from asserting his rights, accrued before the passage of the statute, against a junior patentee of the same land, does not deprive him of property without due process or impair the obligation of his contract if it allows a reasonable time after its enactment within which his suit may be begun. P. 197.

146 La. 1047, affirmed.

ERROR to a judgment of the Supreme Court of Louisiana reversing a judgment in favor of the present plaintiffs in error in a suit to have the Land Company's title adjudged superior and the Cypress Company's patents annulled.

Mr. Walter J. Burke, with whom Mr. Ventress J. Smith, Mr. F. Ernest Delahoussaye, Mr. Charles F. Con-saul and Mr. Jacob H. Morrison were on the briefs, for plaintiffs in error.

The grant by the State to the Board of Commissioners was a grant *in praesenti*. The terms of this grant further left it entirely at the option of the grantee when to require a title deed to be executed to it.

Decisions of the State Supreme Court interpreting this very contract in two cases as withdrawing the lands from sale by the State and conveying a continuing title deed became a part of the contract.

After the grant by the State to the Board, the Register of the State Land Office was deprived of any authority to sell the lands in the name of the State.

After the Board, under the specific legislative authority to sell the lands granted it, did sell all of its rights, with the right to secure title deed in the same manner as the Board might do, the legislature could not, directly or indirectly, impair the contract by changing the term of its execution, or rights of enforcement, from a continuing one, to one limited by a statute of limitation.

A legislative provision to the effect that, whenever a patent issued by the Register of the State Land Office is

signed by the Governor and is recorded in the manner prescribed, it is unassailable after six years, must be interpreted to refer to such lands as the State owns and for which it might authorize the issuance of patent. The statute is one of repose for the benefit of owners of patent lands where the right of the officer to issue might be doubted. It cannot be interpreted to prevent the owners of property rights from contesting a wrongful divestiture of title. Such an application in the instant case would be a divestiture of vested rights without due process of law, and an impairment of the contract.

While the parties to a contract must contract with knowledge that the legislature may change the remedy, may even change the prescriptive term within which the parties may sue to enforce contracts, this rule does not apply to clauses written in the contract, of its substance and nature, either as to the mode of executing the contract between the parties, or as to the time within which it must be executed. That which is written in the contract, as part thereof, is so much of the essence of the obligation that it cannot be affected by legislation.

Mr. Charles F. Borah, Mr. J. Blanc Monroe and Mr. Monte M. Lemann, for defendant in error, submitted.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Suit by the Atchafalaya Land Company to have declared null and void certain patents issued by the Register of the State Land Office of Louisiana to a partnership composed of John N. Pharr and Frank B. Williams, of which the F. B. Williams Cypress Company became grantee May 23, 1903; and that the lands of the patents be adjudged to have been included in the grant of the State to the Board of Commissioners of the Atchafalaya

Basin Levee District anterior to the patent to Pharr and Williams, and by the Board of Commissioners transferred to Edward Wisner and J. M. Dresser, under a contract dated July, 1900, confirmed April 11, 1904, and by them to the Land Company.

It was prayed that the Board of Commissioners be cited to join in the vindication of the Land Company's rights. The Board responded to the citation by intervening, answering and joining in the prayer of the bill. The other plaintiff in error also intervened.

The answer of the Cypress Company brought into the case a statute of limitations of the State approved July 5, 1912, Act No. 62, that prescribes the time of bringing suits which attack patents from the State, or any transfer of property by any subdivision of the State.¹

This suit was not brought within the time prescribed.²

The following are the other facts, stated narratively:

The State of Louisiana is the grantee under the Acts of Congress of 1849 and 1850 of the swamp and overflowed lands in the State.

The State in 1890 [Act No. 97] created the Board of Commissioners of the Atchafalaya Basin Levee District

¹ "Be it enacted by the General Assembly of the State of Louisiana, etc., That all suits or proceedings of the State of Louisiana, private corporations, partnerships or persons to vacate and annul any patent issued by the State of Louisiana, duly signed by the Governor of the State and the Register of the State Land Office, and of record in the State Land Office, or any transfer of property by any sub-division of the State, shall be brought only within six years of the issuance of patent, provided, that suits to annul patents previously issued shall be brought within six years from the passage of this Act."

² It was not brought until April 26, 1919, that is, six years and nearly ten months after the passage of the statute, nearly nineteen years after Wisner and Dresser acquired the claim of the Board of Commissioners, and more than twenty-eight years after the Pharr and Williams patents were recorded.

and constituted it a corporate body. The act created the Levee District and declared that all lands in the District then belonging to the State or that might thereafter be acquired, were thereby granted to the Board of Commissioners of the District. And it was further provided, to accommodate the time for redemption of the lands sold for taxes, even those forfeited for non-payment, after the expiration of six months from the passage of the act, that it should be the duty of the State Auditor and the Register of the State Land Office to convey the lands to the Board of Commissioners whenever requested to do so by the Board or its president; and that after the recording of the instruments of conveyance the title and possession of the lands should vest absolutely in the Board, its successors or grantees.

This request was not made but the Board nevertheless sold to Edward Wisner and John M. Dresser the lands in controversy and bound itself in the instrument of conveyance "to lend itself, with all its rights, powers and privileges and prerogatives to perfect its title or the title acquired under this agreement to all lands which it could have and [Wisner and Dresser] can now justly lay claim to and to do so whenever so requested, . . ."

The Land Company has become the assignee and representative of Wisner and Dresser with their rights. The Lumber Company has acquired rights to the timber on the land and to that extent claims to be entitled to call for a conveyance.

The Board of Commissioners in view of having bound itself to make deed to Wisner and Dresser unites with the Land Company and the Lumber Company, as we have said, to seek the relief desired by them, which includes the cancellation of patents issued to the partnership composed of John N. Pharr and F. B. Williams (of which the Williams Cypress Company is grantee) and the recognition of title in the Land and Lumber Companies.

To the cause of action thus stated, the Cypress Company pleaded the statute of the State heretofore referred to limiting the time of suit.

In reply to the plea of the statute the Land Company and interveners averred that its application would violate the Constitution of the United States in that it would deprive them of their property without due process of law, and would impair the obligation of the contract entered into between the State and the Board of Commissioners of the Levee District and Wisner and Dresser and their assignees.

The specification of this effect is that the grant from the State to the Board of Levee Commissioners took from the State the right to otherwise dispose of the lands, and further, that the right to acquire by transfer from the State was perpetual, and that this right constituted a contract, and the right to demand perfection of the title was in the Board of Commissioners or its assignees, and that these rights were the obligation of the contract, and would be violated by the prescription act.

The trial court (19th Judicial District Court in and for the Parish of Iberia) accepted this view and adjudged to the Land Company and interveners the relief and judgment prayed for.

Upon appeal of the Cypress Company the Supreme Court reversed the decree and adjudged that the plea of prescription should have been sustained, and that the demands of the Land Company and interveners should have been denied and rejected.

The court recited the facts, as we have stated them, and that, within six months after the statute was passed (July 8, 1890) granting the lands to the Board of Commissioners, Pharr and Williams made cash purchases of the lands now in controversy and obtained the patents in contest which were promptly recorded. The court stated further that Pharr sold his interest in the lands to Williams in 1892

and Williams sold the lands to the Cypress Company in 1903 and the deed was duly recorded, and that the Company immediately went into possession of the lands and exercised ownership upon them, and has ever since exercised ownership in various ways to the date of filing its answer, and it and its grantors have since 1890 paid the taxes on the lands. The court pointed out that no instrument of conveyance was ever made to the Board of Commissioners nor was there any request made for the same as provided for in the Act of 1890.

The court decided these were indispensable conditions and, they not having been performed, no indefeasible title passed or could pass to the Board or its assignees. Or, to quote the court, it quoting a state decision, "the board of commissioners of the levee district could not convey a perfect title, or title indefeasible at the instance of the state, for any land in the district, before the board had obtained and recorded an instrument of conveyance of the land, in the manner required by the statute creating the levee district," and that until such time "the lands remained under legislative control by the state, as well after as before the board of commissioners contracted with Wisner and Dresser." The conclusion of the court was that "the Legislature, therefore, had power, at any time, to limit the time within which the board of commissioners of the levee district could lay claim to lands that had been disposed of by the state directly in favor of individuals or private corporations", and that this power was exercised by the act of prescription. It was the decision of the court, therefore, that the Land Company's predecessors, Wisner and Dresser, did not acquire a vested interest in the lands as plaintiffs in error contend.

Plaintiffs in error vigorously contest the conclusions of the court and contend that they are contrary to prior decisions. The exigencies of the case do not call for an arbitration of the contest. We are concerned alone with the

power of the State to pass the statute of limitations of 1912, and we agree with the Supreme Court that such statutes are valid if they allow a reasonable time after their enactment for the assertion of an existing right or the enforcement of an existing obligation, and certainly the condition was satisfied by the statute of 1912. Besides having over six years after its enactment to assert their rights, plaintiffs in error, adding their time and that of their predecessors, had nearly a quarter of a century to confirm and fix whatever rights they had to the lands in controversy.

Passing, however, all considerations of details and local aspects of the case, we are of the opinion that none of the invoked provisions of the Constitution of the United States is offended even under the construction plaintiffs in error give to the asserted grant to the Board of Commissioners and its conveyance to Wisner and Dresser. The act of prescription was a proper exercise of sovereignty. The State could recognize, as it did recognize, that there might be claims derived from it, asserted or to be asserted, rightfully or wrongfully, involving conflicts which should be decided and quieted in the public interest, and therefore, enacted the statute. And such is the rationale of statutes of limitations. They do not necessarily lessen rights of property or impair the obligation of contracts. Their requirement is that the rights and obligations be asserted within a prescribed time. If that be adequate, the requirement is legal, and its justice and wisdom have the testimony of the practices of the world.

Decree affirmed.